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code of federal regulations

Public Welfare

45

PARTS 500 TO 1199
Revised as of October 1, 1989

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Public Welfare

45

PARTS 500 TO 1199

Revised as of October 1, 1989

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1989

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To cite the regulations in this volume use title, part and section number. Thus, **45 CFR 500.1** *refers to Title 45, Part 500, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	**as of January 1**
Title 17 through Title 27	**as of April 1**
Title 28 through Title 41	**as of July 1**
Title 42 through Title 50	**as of October 1**

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1989), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a

date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523-4534.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR Index and Finding Aids. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table

III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Acting Director,
Office of the Federal Register.

October 1, 1989.

THIS TITLE

Title 45—Public Welfare is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1-199, 200-499, 500-1199, and 1200 to end. Volume one (Parts 1-199) contains all current regulations issued under Subtitle A—Department of Health and Human Services, General Administration. Volume two (Parts 200-499) contains all current regulations issued under Chapter II—Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services, Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services, and Chapter IV—Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services. Volume three (Parts 500-1199) contains all current regulations issued under Chapter V—Foreign Claims Settlement Commission of the United States, Department of Justice, Chapter VI—National Science Foundation, Chapter VII—Commission on Civil Rights, Chapter VIII—Office of Personnel Management, Chapter X—Office of Community Services, Family Support Administration, Department of Health and Human Services, and Chapter XI—National Foundation on the Arts and the Humanities. Volume four (Part 1200 to end) contains all current regulations issued under Chapter XII—ACTION, Chapter XIII—Office of Human Development Services, Department of Health and Human Services, Chapter XVI—Legal Services Corporation, Chapter XVII—National Commission on Libraries and Information Science, Chapter XVIII—Harry S Truman Scholarship Foundation, Chapter XX—Commision on the Bicentennial of the United States Constitution, Chapter XXI—Commission of Fine Arts, and Chapter XXII—Christopher Columbus Quincentenary Jubilee Commission. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of October 1, 1989.

A subject index to 45 CFR Parts 680-684 appears in the Finding Aids section of this volume. Those amendments to Part 801—Voting Rights Program, Appendixes A, B, and D, which apply to Texas also appear in Spanish following Appendix D.

Redesignation tables appear in the Finding Aids section of each volume. A derivation table relating to the disposition of sections in Part 101 appears in the first volume.

For this volume Kevin Harris was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Ruth C. Pontius.

Would you like to know...

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PART 500—APPEARANCE AND PRACTICE

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AUTHORITY: Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); Sec. 3, Pub. L. 81–455, 64 Stat. 12, as amended (22 U.S.C. 1622); 18 U.S.C. 207.

SOURCE: 52 FR 17556, May 11, 1987, unless otherwise noted.

§ 500.1 Appearance and representation.

(a) An individual may appear in his or her own behalf; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; an officer or employee of the United States Department of Justice, when designated by the Attorney General of the United States, may represent the United States in a claim proceeding.

(b) A person may be represented by an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia.

(c) In cases falling within the purview of Subchapter B of this chapter, persons designated by veterans', service, and other organizations to appear before the Commission in a representative capacity on behalf of claimants shall be deemed duly authorized to practice before the Commission when the designating organization shall have been issued a letter of accreditation by the Commission. Petitions for accreditation shall be in writing, executed by duly authorized officer or officers, and addressed to the Foreign Claims Settlement Commission of the United States, Washington, DC 20579. Upon receipt of a petition setting forth pertinent facts as to the organization's history, purpose, number of posts or chapters and their locations, approximate number of paid-up memberships, statements that the organization will not charge any fee for services rendered by its designees in behalf of claimants and that it will not refuse on the grounds of non-membership to represent any claimant who applies for such representation if such claimant has an apparently valid claim, accompanied by a copy of the organization's constitution, or charter, by-laws, and its latest financial statement, the Commission in its discretion will consider and in appropriate cases issue or deny letters of accreditation.

(d) A person may not be represented before the Commission except as authorized in paragraphs (a), (b), and (c) of this section.

§ 500.2 Notice of entry or withdrawal of counsel in claims.

(a) Counsel entering an appearance in a claim originally filed by a claimant in the claimant's behalf, or upon request for a substitution of attorneys, shall be required to file an authorization by such claimant.

(b) When counsel seeks to withdraw from the prosecution of a claim, it must appear that the client (claimant) has been duly notified.

(c) When a claimant advises the Commission that counsel no longer represents such claimant, a copy of the Commission's acknowledgement shall be forwarded to such counsel.

§ 500.3 Fees.

(a) No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Subchapter B of this chapter shall exceed ten per centum of the amount allowed on account of such claim, except that the Commission in its discretion may fix a lesser per centum with respect to any claim filed thereunder.

(b) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within Title I of the International Claims Settlement Act of 1949, as amended, shall not exceed ten per centum of the total amount paid on account of such claim.

§ 500.4 Suspension of attorneys.

(a) The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found after a hearing in the matter—

(1) Not to possess the requisite qualifications to represent others before the Commission; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, or section 4(f) of the International Claims Settlement Act of 1949, as amended, or § 500.3 of Part 500 of these regulations.

(b) Contemptuous or contumacious conduct at any hearing shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

§ 500.5 Disqualification of former employees; disqualification of partners of current employees.

(a) No member, officer or employee of the Commission, including a special Government employee shall, after employment has ceased, knowingly act as an agent or attorney for, or otherwise represent, any person or party (other than the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any person or party (other than the United States) (1) to the Commission or any other department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, (2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and (3) in which such member, officer, employee, or special Government employee, participated personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed.

(b) No member, officer, or employee of the Commission, including a special Government employee, shall, within two years after employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any person or party (other than the United States) in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any person or party (other than the United States) (1) to an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) which was actually pending under his or her official responsibility as an employee within a period of one year prior to the termination of such responsibility.

(c) No member, officer, or employee of the Commission, including a special Government employee, in an executive level position, in a position with a comparable or greater rate of pay, or in a position that involved significant decision making or supervisory responsibility as designated by the Director of the Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within two years after employment has ceased, knowingly represent or aid, counsel, advise, consult or assist in representing any person or party (other than the United States) by personal presence at any formal or informal appearance before (1) an organization enumerated in paragraph (a)(1) of this section, or an officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) in which he or she participated personally or substantially as an employee (18 U.S.C. 207(b)(ii)).

(d) No member, officer, or employee of the Commission other than a special Government employee with service of less than sixty days in a given calendar year, who has been an employee in an executive level position or a position with a comparable or greater rate of pay, or in a position which involved significant decision making or supervisory responsibility as designated by the Director of Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within one year after such employment has ceased, knowingly engage in conduct described in the next sentence. The prohibited knowing conduct is that of acting as attorney or agent for, or otherwise representing anyone other than the United States, in any formal or informal appearance before, or with the intent to influence, making any oral or written communication on behalf of anyone other than the United States (1) to the Commission, or any employee thereof, (2) in connection with any rulemaking or any matter enumerated and described in paragraph (a)(2) of this section and (3) which is pending before the Commission or in which it has a direct and substantial interest.

(e) No partner of an employee shall act as agent or attorney for anyone other than the United States before an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, in connection with any matter enumerated and described in paragraph (a)(2) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his or her official responsibility.

§ 500.6 Disciplinary proceedings against former employees.

(a) Upon a determination by the Commission's Designated Ethics Officer, after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, has violated 18 U.S.C. 207 (a), (b) or (c), the Designated Ethics Officer shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending before the Commission, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former employee who submits an answer to the notice to show cause does not request a hearing or if the Designated Ethics Officer does not receive an answer within five days after the expiration of the time prescribed by the notice, the Designated Ethics Officer shall forward the record, including the report(s) of investigation, to the Chairman. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former employee's request for a hearing, the Designated Ethics Officer shall notify him or her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a Federal administrative law judge or other Federal official with comparable duties. The presiding officer shall insure that the former employee has, among others, the rights:

(1) To self-representation or representation by counsel;

(2) To introduce and examine witnesses and submit physical evidence;

(3) To confront and cross-examine adverse witnesses;

(4) To present oral argument; and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Designated Ethics Officer shall designate one or more officers or employees of the Commission to present the evidence against the former employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former employee must be sustained by substantial evidence that he or she violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Chairman, who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Chairman shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Chairman.

(j) In case of a former employee who filed an answer to the notice to show cause but did not request a hearing, the Chairman shall make the final decison on the record submitted by the Designated Ethics Officer pursuant to subsection (b) of this section.

(k) The Chairman, in a case where:

(1) The defense has been waived;

(2) The former employee has failed to appeal from an adverse initial decision; or

(3) The Chairman has issued a final decision that the former employee violated 18 U.S.C. 207 (a), (b) or (c) may issue an order:

(i) Prohibiting the former employee from making on behalf of any person or party (other than the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

PART 501—SUBPOENAS, DEPOSITIONS, AND OATHS

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501.2 Subpoenas.
501.3 Service of process.
501.4 Witnesses.
501.5 Depositions.
501.6 Documentary evidence.
501.7 Time.

AUTHORITY: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); sec. 3, Pub. L. 81-455, 64 Stat. 12, as amended (22 U.S.C. 1622).

SOURCE: 52 FR 17559, May 11, 1987, unless otherwise noted.

§ 501.1 Extent of authority.

(a) *Subpoenas, oaths and affirmations.* The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) *Certification.* The Commission or any member thereof may, for the purpose of any such hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

§ 501.2 Subpoenas.

(a) *Issuance.* A member of the Commission or a designated employee may, on such member or employee's own volition of upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents.

Applications for issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Deposit for costs.* The Commission or designated employee, before issuing any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover fees and mileage involved.

(c) *Motion to quash.* If any person subpoenaed does not intend to comply with the subpoena, such person shall, within 15 days after the date of service of the subpoena, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file such answer not later than 15 days after the filing of the motion. The Commission shall rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon shall become part of the official record.

(d) *Appeal from interlocutory order.* An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or from the refusal to issue a subpoena for the production of documentary evidence.

(e) *Order of court upon failure to comply.* Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein such person resides or transacts business. Such court, pursuant to the provisions of Pub. L. 81-696, approved August 16, 1950 (50 U.S.C. App. 2001(d)), may issue an order requiring such person to appear at the designated place of hearing, examination or investigation, then and there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such an order may be punished by the court as a contempt thereof. All processes in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

§ 501.3 Service of process.

(a) *By whom served.* The Commission shall serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) *Kinds of service.* Subpoenas, orders, rulings, and other processes of the Commission may be served by delivering in person, by first class or registered mail, or by telegraph or by publication.

(c) *Personal service.* Service by delivering in person may be accomplished by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer or a director of the corporation to be served, or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of such person, partnership, or corporation.

(3) Proof of service. The return receipt for said order, other process or supporting papers, or the verification by the person serving, setting forth the manner of said service, shall be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon such attorney or agent shall be deemed service upon the party.

(d) *Service by first class mail.* Service by first class mail shall be regarded as complete upon deposit in the United States mail properly stamped and addressed.

(e) *Service by registered mail.* Service by registered mail shall be regarded as complete on the date the return post office registered receipt for said orders, notices and other papers is received by the Commission.

(f) *Service by telegraph.* Service by telegraph shall be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) *Service by publication.* Service by publication is completed when due notice shall have been given in the publication for the time and in the manner provided by law or rule.

(h) *Date of service.* The date of service shall be the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) *Filing with Commission.* Papers required to be filed with the agency shall be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon such actual receipt the filing shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraphs (e) and (f) of this section.

§ 501.4 Witnesses.

(a) *Examination of witnesses.* Witnesses shall appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) *Witness fees and mileage.* Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party shall be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage shall be paid by the Commission or by the party at whose request the witness appears.

(c) *Transcript of testimony.* Every person required to attend and testify or to submit documents or other evidence shall be entitled to retain or, on payment of prescribed costs, procure a copy of the transcript of the testimony or the documents produced.

§ 501.5 Depositions.

(a) *Application to take.* (1) An application to take a deposition shall be in writing setting forth the reason why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If such deposition is being offered in connection with a hearing or examination, the application for deposition shall be made to the Commission at least 15 days prior to the proposed date of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination, only where it is shown for good cause that the facts as set forth in the application to take the deposition were not within the knowledge of the person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) *Who may take.* Such deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legation, consul-general, consul, vice consul, or consular agent of the United States.

(c) *Examination and certification of testimony.* At the time and place specified in said order the officer taking such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony shall be reduced to writing by, or under the direction of, the presiding officer. All objections to questions or evidence shall be deemed waived unless made in accordance with paragraph (d) of this section. The officer shall not have power to rule upon any objections but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach a certificate stating that the witness was duly sworn, that the deposition is a true record of the testimony and exhibits given by the witness and that said officer is not counsel or attorney to any of the interested parties. The officer shall immediately seal and deliver an original and two copies of said transcript, together with the officer's certificate, by registered mail to the Foreign Claims Settlement Commission, Washington, DC 20579 or to the field office designated.

(d) *Admissibility in evidence.* The deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) *Errors and irregularities.* All errors or irregularities occurring shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(f) *Scope of use.* The deposition of a witness, if relevant, may be used if the Commission finds:

(1) That the witness has died since the deposition was taken; or

(2) that the witness is at a distance greater than 100 miles radius of Washington, DC, the designated field office or the designated place of the hearing; or

(3) that the witness is unable to attend because of other good cause shown.

(g) *Interrogatories and cross-interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examinations. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, such person's representative or attorney, a stenographic reporter and the presiding officer, shall be present at the examination of the witness, which fact shall be certified by such officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

(h) *Fees.* A witness whose deposition is taken pursuant to the regulations in this Part, and the officer taking the deposition, shall be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees shall be paid by the Commission or by the party at whose request the deposition is being taken.

[52 FR 17559, May 11, 1987, as amended at 52 FR 19731, May 27, 1987]

§ 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought. The production of documentary evidence shall not be required at any place other than the witness' place of business. The production of such documents shall not be required at any place if, prior to the return date specified in the subpoena, such person either has furnished the issuer of the subpoena with a properly certified copy of such documents or has entered into a stipulation as to the information contained in such documents.

§ 501.7 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the regulations, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) *Enlargement.* When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion, notice, or previous order or (2) upon motion, permit the act to be done after the expiration of the specified period.

PART 502—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.
502.1 Adoption of regulations.
502.2 Review of statements of employment and financial interests.
502.3 Disciplinary and other remedial action.
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502.5 Outside employment and other activity.
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502.7 Statements of employment and financial interests.
502.8 Supplementary statements.

AUTHORITY: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supp., p. 130; 5 CFR 735.101 *et seq.*

SOURCE: 52 FR 17560, May 11, 1987, unless otherwise noted.

§ 502.1 Adoption of regulations.

Pursuant to 5 CFR 735.104(f), the Foreign Claims Settlement Commission of the United States (referred to hereinafter as "the Commission") hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: Sections 735.101-102, 735.201a, 735.202 (a), (d), (e), (f) through 735.210, 735.303(a), 735.304, 735.305(a), 735.403(a), 735.404, 735.405, 735.407 through 735.411, 735.412 (b) and (d). These adopted sections are modified and supplemented as set forth in this part.

§ 502.2 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this Part shall be reviewed by the Commission's Designated Ethics Officer. When this review indicates a conflict between the interests of an employee or special Government employee of the Commission and the performance of such employee's services for the Government, the Designated Ethics Officer shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the Designated Ethics Officer shall forward a written report on the indicated conflict to the Chairman of the Commission through the counselor for the agency designated under 5 CFR 735.105(a).

§ 502.3 Disciplinary and other remedial action.

An employee or special Government employee of the Commission who violates any of the regulations in this part or adopted under § 502.1 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of the employee's conflicting interest; or

(c) Disqualification for a particular assignment.

§ 502.4 Gifts, entertainment, and favors.

The Commission authorizes the exceptions to 5 CFR 735.202(a) set forth in 5 CFR 735.202(b) (1) through (4).

§ 502.5 Outside employment and other activity.

An employee of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of such employee's Government employment; *Provided, however,* That no professional officer or employee of the Commission shall engage in the private practice of such officer or employee's profession, and no officer or employee, regardless of the nature of his or her duties with the Commission, shall engage in the private practice of law, except upon the prior approval in writing by the Chairman of the Commission.

§ 502.6 Specific provisions of agency regulations governing special Government employees.

(a) Special Government employees of the Commission shall adhere to the standards of conduct applicable to employees as set forth in this Part and adopted under § 502.1, except 5 CFR 735.203(b).

(b) Special Government employees of the Commission may teach, lecture, or write in a manner not inconsistent with 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the Commission authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 502.4.

§ 502.7 Statements of employment and financial interests.

(a) In addition to the employees required to submit statements of employment and financial interests under 5 CFR 735.403(a), attorneys in charge of divisions shall submit statements of employment and financial interests.

(b) Each statement of employment and financial interests required by this section shall be submitted to the Chairman of the Commission.

(c) An employee who believes that his or her position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review thereof under the Commission's grievance procedure.

§ 502.8 Supplementary statements.

Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interst that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or the regulations in this part or adopted under § 502.1.

PART 503—PUBLIC INFORMATION

Sec.

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Authority: 5 U.S.C. 552.

Source: 52 FR 17561, May 11, 1987, unless otherwise noted.

§ 503.1 Organization and authority—Foreign Claims Settlement Commission.

(a) The Foreign Claims Settlement Commission of the United States ("the Commission") is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) effective July 1, 1954. The Commission was transferred to the Department of Justice as an independent agency within that Department as of October 1, 1980, under the terms of Pub. L. 96-209, approved March 14, 1980 (94 Stat. 96, 22 U.S.C. 1622c). Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12, 22 U.S.C. 1621-1645o) and the War Claims Act of 1948 (62 Stat. 1240, 50 U.S.C. App. 2001-2017p).

(b) The Commission has jurisdiction to determine claims of United States nationals against foreign governments for compensation for losses and injuries sustained by such nationals, pursuant to programs which may be authorized under either of said Acts. Available funds have their sources in international settlements or liquidation of foreign assets in this country by the Department of Justice or Treasury, and from public funds when provided by the Congress.

(c) The Chairman and the two part-time members of the Commission are appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided by Pub. L. 96-209, *supra*.

(d) All functions of the Commission are vested in the Chairman with respect to the internal management of the affairs of the Commission, including but not limited to:

(1) The appointment of personnel employed under the Commission;

(2) The direction of employees of the Commission and the supervision of their official duties;

(3) The distribution of business among employees and organizational units under the Commission;

(4) The preparation of budget estimates; and

(5) The use and expenditures of funds of the Commission available for expenses of administration.

(e) Requests for records shall be made in writing by mail or presented in person to the Administrative Officer, Foreign Claims Settlement Commission, Washington, DC, 20579.

(f) The offices of the Commission are located at 1111 20th Street NW. (Vanguard Building), 4th Floor, Washington, DC.

§ 503.2 Material to be published in the Federal Register pursuant to Pub. L. 89-487.

The Commission shall separately state and concurrently publish the following materials in the Federal Register for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Every amendment, revision, or repeal of the foregoing.

§ 503.3 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by, any matter required to be published in the Federal Register and not so published.

§ 503.4 Incorporation by reference.

For purposes of this part, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

§ 503.5 Records generally available.

The Commission will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto;

(b) Statements of policy and interpretations which have been adopted by the Commission which have not been published in the Federal Register; and

(c) A current index, which shall be updated at least quarterly, covering the foregoing material adopted, issued or promulgated after July 4, 1967. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

§ 503.6 Current index.

The Commission shall maintain and make available for public inspection and copying, current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, as required by 5 U.S.C. 552(a)(2).

§ 503.7 Additional documents and records generally available for inspection and copying.

The following kinds of documents are also available for inspection and copying in the offices of the Commission:

(a) Rules of practice and procedure.

(b) Annual report of the Commission to the Congress of the United States.

(c) Bound volumes of Commission decisions.

(d) International Claims Settlement Act of 1949, with amendments; the War Claims Act of 1948, with amendments; and related Acts.

(e) Claims agreements with foreign governments effecting the settlement of claims under the jurisdiction of the Commission.

(f) Press releases and other miscellaneous material concerning Commission operations.

(g) Indexes of claims filed under the various claims programs administered by the Commission.

§ 503.8 Effect of noncompliance.

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this Part, or unless that private party shall have actual and timely notice of the terms thereof.

§ 503.9 Availability of records.

(a) Each person desiring access to a record covered by this part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".

(4) The request must be addressed to the appropriate official or employee of the Commission as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Commission.

(b) If the requirements of paragraph (a) of this section are not met, the ten day time limit described in § 503.10(a) will not begin to run until the request has been identified by an official or employee of the Commission as a request under the Freedom of Information Act and has been received by the appropriate official or employee of the Commission.

(c) Each person desiring access to a record covered in this Part that is located in the Commission, or to obtain a copy of such a record, must make a written request to the Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

(d) Each request should reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this part in connection with Commission records is delegated to the Administrative Officer or the Commission employee acting in that official's capacity.

§ 503.10 Actions on requests.

(a) The Administrative Officer or any employee acting in that official's capacity shall determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request. Upon receipt of a request for a Commission record which is available, thu Administrative Officer or other employee shall notify the requester as to the time the record is available, and shall promptly make the record available after advising such requester of the applicable fees under § 503.13. The person making such request shall be notified immediately after any adverse determination, the reasons for making such adverse determination and the right of such person to appeal.

(b) Any denial of a request for a record shall be written and signed by the Administrative Officer or other employee, including a statement of the reason for denial. Such statement shall contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption, an explanation of how the exemption applies to the record withheld.

(2) If a record requested does not exist or has been legally disposed of, the requester shall be so notified.

(c) In unusual circumstances, the time limit prescribed in paragraph (a) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and legal holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the person making such request shall be notified of the provisions for judicial review of that determination under section 552(a)(4) of Title 5, United States Code.

§ 503.11 Appeals.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (d) of § 503.10, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10, that a requested record will not be disclosed, may apply to the Chairman of the Commission, or in the Chairman's absence an officer or employee designated by the Chairman, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the Chairman or Chairman's designee, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA". If these requirements are not met, the twenty day limit described in § 503.10 will not begin to run until the application has been identified as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever it is to be determined necessary, the person making the request may be required to furnish additional information, or proof of factual allegations and other proceedings appropriate in the circumstances may be ordered. The decision of the Chairman or Chairman's designee as to the availability of the record is administratively final.

(d) The decision not to disclose a record under this part is considered to be a withholding for the purposes of section 552(a)(3) of Title 5, United States Code.

§ 503.12 Exemptions.

In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records which are specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include inter-agency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission and its staff regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 503.13 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendered in processing requests for disclosure of Commission records under this part.

(a) *Fee for duplication of records.* $0.15 per page.

(b) *Search and review fees.* (1) Searches for records by clerical personnel—$2.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—$5.50 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee.* $1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and non-commercial scientific institutions—Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d) (1), (2) and (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250.00, the requester may be required to pay the fees in advance in order to obtain completion of such processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this part, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of such pending or new request.

(3) With regard to any request coming within paragraphs (h) (1) and (2) of this section, the administrative time limits set forth in §§ 503.10 and 503.11 of this part will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of such fees. No charges shall be assessed if such fees amount to $8.00 or less.

PART 504—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

Subpart A—Privacy Act Regulations

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504.4 Accounting of certain disclosures.
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504.9 Fees.
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SOURCE: 52 FR 17565, May 11, 1987, unless otherwise noted.

Subpart A—Privacy Act Regulations

AUTHORITY: 5 U.S.C. 552a(f).

§ 504.1 Definitions—Privacy Act.

For the purpose of this Part:

"Agency" includes any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency. The Foreign Claims Settlement Commission ("Commission") is an "agency" within the meaning of the term.

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" includes maintain, collect, use or disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, an individual's education, financial transactions, medical history, and criminal or employment history, and that contains an individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

"Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of Title 13, United States Code.

"System of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 504.2 General policies—Privacy Act.

The Commission will protect the privacy of an individual identified in any information or record systems which it maintains. Accordingly, its officials and employees, except as otherwise provided by law or regulation, will:

(a) Permit an individual to determine what records pertaining to such individual are collected, maintained, used or disseminated by the Commission.

(b) Permit an individual to prevent a record pertaining to such individual obtained by the Commission for a particular purpose from being used or made available for another purpose without the individual's consent.

(c) Permit an individual to gain access to information pertaining to such individual in Commission records, to have a copy made of all or any portion thereof, and to correct or amend such records.

(d) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(e) Permit exemptions from record requirements provided under the Privacy Act only where an important public policy use for such exemption has been determined in accordance with specific statutory authority.

§ 504.3 Conditions of disclosure.

The Commission will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

(a) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use;

(d) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13, United States Code;

(e) To a recipient who has provided the Commission with adequate advance assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation to determine whether the record has such value;

(g) To another agency or to an instrumentality of any government jurisdiction within or under control of the United States for a civil or ciminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Commission, specifying the particular record and the law enforcement activity for which it is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure, notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of that official's authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 504.4 Accounting of certain disclosures.

(a) Except for disclosures under § 504.3 (a) and (b) of this part, the Administrative Officer shall keep an accurate accounting of each disclosure of a record to any person or to another agency made under § 504.3 (c), (d), (e), (f), (g), (h), (i), (j), and (k) of this part.

(b) Except for a disclosure made to another agency or to an instrumentality of any governmental jursidiction under § 504.3(g) of this part, the Administrative Officer shall make the accounting as required under paragraph (a) of this section available to any individual upon written request made in accordance with § 504.5.

(c) The Administrative Officer shall inform any person or other agency about any correction or notation of dispute made in accordance with § 504.7 of this part of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) An accounting of disclosures of records within this section shall consist of the date, nature, the purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(e) Such accounting shall be retained for 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 504.5 Access to records or information

(a) Upon request in person or by mail, any individual shall be informed whether or not a system of records maintained by the Commission contains a record or information pertaining to such individual.

(b) Any individual requesting access to such record or information in person shall appear in person at the offices of the Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 400, Washington, DC., between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, and

(1) Provide information sufficient to identify the record, e.g., the individual's own name, claim and decision number, date and place of birth, etc.;

(2) Provide identification to verify the individual's identity, e.g., driver's license, identification or Medicare card; and

(3) Any individual requesting access to records or information pertaining to such individual may be accompanied by a person of the individual's own choosing while reviewing the record thereof. If an individual elects to be so accompanied, advance notification of the election shall be required along with a written statement authorizing disclosure and discussion of the record in the presence of the accompanying person at any time, including the time access is granted.

(c) Any individual making a request for access to records or information pertaining to such individual by mail shall address such request to the Administrative Officer (Privacy Officer), Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579, and shall provide information acceptable to the Administrative Officer to verify the individual's identity.

(d) Responses to requests under this section normally will be made within ten (10) days of receipt (excluding Saturdays, Sundays, and legal holidays). If it is not possible to respond to requests within such period, an acknowledgement will be sent to the individual within ten (10) days of receipt of the request (excluding Saturdays, Sundays, and legal holidays).

§ 504.6 Determination of requests for access to records.

(a) Upon request made in accordance with § 504.5, the Administrative Officer shall:

(1) Determine whether or not such request will be granted;

(2) Make such determination and provide notification within a reasonable period of time after receipt of such request.

(b) If access to a record is denied because information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, the Administrative Officer shall notify the individual of such determination and the reason therefor.

(c) If access to the record is granted, the individual making such request shall notify the Administrative Officer whether the records requested are to be copied and mailed to the individual.

(d) If records are to be made available for personal inspection, the individual shall arrange with the Administrative Officer a mutually agreeable time and place for inspection of the record.

§ 504.7 Amendment of a record.

(a) Any individual may request amendment of a record pertaining to such individual according to the procedure in paragraph (b) of this section except those records described under paragraph (d) of this section.

(b) After inspection by an individual of a record pertaining to such individual, he or she may file a written request, presented in person or by mail, with the Administrative Officer, for an amendment to a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) Not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request made in accordance with this section to amend a record in whole or in part, the Administrative Officer shall:

(1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(2) Inform the individual, by certified mail return receipt requested, of the refusal to amend such record, setting forth the reasons therefor, and notify the individual of the right to appeal that determination as provided under § 504.8 of this part.

(d) The provisions for amending records do not permit the alteration of evidence presented in the course of Commission proceedings in the adjudication of claims, nor do they permit collateral attack upon what has already been subject to final agency action in the adjudication of claims in programs previously completed by the Commission pursuant to statutory time limitations.

§ 504.8 Appeals from denial of requests for amendment to records.

(a) An individual whose request for amendment of a record pertaining to such individual is denied may request a review of such determination. Such request shall be addressed to the Chairman of the Commission, and shall specify the reasons for which the refusal to amend is challenged.

(b) If on appeal the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the determination. The statement must also be submitted within 30 days of receipt of the denial. The statement shall be included in the system of records in which the disputed record is maintained and shall be marked so as to indicate (1) that a statement of disagreement has been filed, and (2) where in the system of records the statement may be found.

§ 504.9 Fees.

Fees to be charged, if any, to any individual for making copies of such individual's record excluding the cost of any search for and review of the record shall be as follows:

(a) Photocopy reproductions, each copy $0.15.

(b) Where the Commission undertakes to perform for a requester, or any other person, services which are clearly not required to be performed under the Privacy Act, either voluntarily or because such services are required by some other law, the question of charging fees for such services shall be determined by the official or designee authorized to release the information, under the Federal user charge statute, 31 U.S.C. 583a, any other applicable law, and the provisions of § 503.13 of Part 503 of the Commission's regulations.

§ 504.10 Exemptions.

No system of records maintained by the Foreign Claims Settlement Commission is exempt from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k). However, the Chairman of the Commission reserves the right to promulgate rules in accordance with the requirements of 5 U.S.C. 553(b) (1), (2) and (3), (c) and (e) to exempt any system of records maintained by the Commission in accordance with the provisions of 5 U.S.C. 552a(k).

§ 504.11 Reports.

(a) The Administrative Officer or designee shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any Commission system of records, as required by 5 U.S.C. 552a(o).

(b) If at any time a system of records maintained by the Commission is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the number of records contained in such system shall be separately listed and reported to the Office of Management and Budget.

§ 504.12 Notices.

The Commission shall publish in the FEDERAL REGISTER at least annually a notice of the existence and character of the systems of records which it maintains. Such notice shall include:

(a) The name and location of each system;

(b) The categories of individuals on whom the records are maintained in each system;

(c) The categories of records maintained in each system;

(d) Each routine use of the records contained in each system including the categories of users and the purpose of each use;

(e) The policies and practices of the Commission regarding storage, retrievability, access controls, retention, and disposal of the records;

(f) The title and business address of the agency official who is responsible for each system of records;

(g) Commission procedures whereby an individual can be notified if a system of records contains a record pertaining to such individual;

(h) Commission procedures whereby an individual can be notified how to gain access to any record pertaining to such individual contained in a system of records, and how to contest its content, and

(i) The categories of sources of records in each system.

Subpart B—Government in the Sunshine Regulations

AUTHORITY: 5 U.S.C. 552b.

§ 504.20 Definitions.

For purposes of this part: "Agency" means any agency, as defined in 5 U.S.C. 552b(e), which includes the Foreign Claims Settlement Commission, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

"Closed meeting" and "closed portion of a meeting" mean, respectively, a meeting or that part of a meeting designated as provided in § 504.27 as closed to the public by reason of one or more of the closure provisions listed in § 504.24.

"Commission" means the Foreign Claims Settlement Commission, which is a collegial body that functions as a unit composed of three individual members, appointed by the President with the advice and consent of the Senate.

"Meeting" means the deliberations of at least two (quorum) members of the Commission where such deliberations determine or result in joint conduct or disposition of official Commission business.

"Member" means any one of the three members of the Commission.

"Open meeting" means a meeting or portion of a meeting which is not a closed meeting or a closed portion of a meeting.

"Public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way, in an open meeting of the Commission within the limits of reasonable and comfortable accommodations made available for such purpose by the Commission.

§ 504.21 Notice of public observation.

(a) A member of the public is not required to give advance notice of an intention to exercise the right of public observation of an open meeting of the Commission. However, in order to permit the Commission to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to the Commission at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 504.29.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Commission if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention.

§ 504.22 Scope of application.

The provisions of this Part 504, §§ 504.20 through 504.29, apply to meetings of the Commission, and do not apply to conferences or other gatherings of employees of the Commission who meet or join with others, except at meetings of the Commission to deliberate on or conduct official agency business.

§ 504.23 Open meetings.

Every meeting of the Commission shall be open to public observation except as provided in § 504.24.

§ 504.24 Grounds for closing a meeting.

(a) Except in a case where the Commission determines otherwise, a meeting or portion of a meeting may be closed to public observation where the Commission determines that the meeting or portion of the meeting is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would con-

stitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission, provided the Commission has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5, United States Code, or otherwise involve a determination on the record after opportunity for a hearing.

(b) If the Commission determines that the public interest would require that a meeting to be open, it may nevertheless so hold.

§ 504.25 Announcement of meetings.

(a) The Commission meets in its offices at 1111 20th Street, NW., Washington, DC, from time to time as announced by timely notice published in the Federal Register.

(b) At the earliest practicable time, which is estimated to be not later than eight days before the beginning of a meeting of the Commission, the Commission shall make available for public inspection in its offices, and, if requested, shall furnish by telephone or in writing, a notice of the subject matter of the meeting, except to the extent that such information is exempt from disclosure under the provisions of § 504.24.

§ 504.26 Procedures for closing of meetings.

(a) The closing of a meeting shall occur when:

(1) A majority of the membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 504.24, or with respect to any information which is proposed withheld under § 504.24. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 504.24 (e), (f) or (g), the Commission upon request of any one of its Commission members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question and a full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Commission shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, before such meeting is closed, the Commission's Chairman shall publicly certify that, the meeting may be closed to the public, and shall state each relevant closure provision. A copy of such certification, together with a statement setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission.

§ 504.27 Reconsideration of opening or closing, or rescheduling a meeting.

The time or place of a Commission meeting may be changed following the public announcement only if the Commission publicly announces such changes at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Commission members determines by a recorded vote that Commission business so requires and that no earlier announcement of the changes was possible, and the Commission publicly announces such changes and the vote of each member upon such change at the earliest practicable time.

§ 504.28 Record of closed meetings, or closed portion of a meeting.

(a) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 504.24 (d), (h), or (j), the Commission shall maintain either such transcript, recording, or a detailed set of minutes.

(b) Any minutes so maintained shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considered in connection with any action shall be identified in the minutes.

(c) The Commission shall promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Commission determines to contain information which may be withheld under § 504.24. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of two years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Commission shall be by or under the authority of the Chairman of the Commission.

§ 504.29 Requests for information.

Requests to the Commission for information about the time, place, and subject matter of a meeting, whether it or any portions thereof are closed to the public, and any requests for copies of the transcript or minutes or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 504.24, shall be addressed to the Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579, telephone 202/ 653-6155.

SUBCHAPTER B—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUB. L. 91-289, APPROVED JUNE 24, 1970

PART 505—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.
505.1 Claim defined.
505.2 Time within which claims may be filed.
505.3 Official claim forms.
505.4 Place of filing claims.
505.5 Documents to accompany forms.
505.6 Receipt of claims.

AUTHORITY: Sec. 2, Pub. L. 80-896, 62 Stat. 1240 as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

SOURCE: 52 FR 17569, May 11, 1987, unless otherwise noted.

§ 505.1 Claim defined.

(a) A properly completed and executed application made on an official form provided by the Foreign Claims Settlement Commission for such purpose constitutes a claim and will be processed under the laws administered by the Commission.

(b) Any communication, letter, note, or memorandum from a claimant, or the claimant's duly authorized representative, or a person acting as next friend of a claimant who is not sui juris, setting forth sufficient facts to apprise the Commission of an interest to apply under the provisions of sections 5(i) and 6(f) of the Act, shall be deemed to be an informal claim. Where an informal claim is received and an official form is forwarded for completion and execution by the applicant, such official form shall be considered as evidence necessary to complete the initial claim, and unless such official form is received within thirty (30) days from the date it was transmitted for execution, if the claimant resides in the continental United States, or forty-five (45) days if outside the continental United States, the claim may be disallowed.

§ 505.2 Time within which claims may be filed.

(a) Claims of individuals entitled to benefits under section 5(i) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or (3) 3 years from the date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States, whichever of the preceding dates last occurs.

(b) Claims of individuals entitled to benefits under section 6(f) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the prisoner of war by whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or (3) 3 years from the date the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States, whichever of the preceding dates last occurs.

§ 505.3 Official claim forms.

Official forms are provided for use in the preparation of claims for submission to the Commission for processing. Claim forms are available at the Washington offices of the Commission and through other offices as the Commission may designate. The official claim form for all claims under section

5(i) and 6(f) has been designated, FCSC Form 289, "Application for Compensation for Members of the Armed Forces of the United States Held as Prisoner of War in Vietnam; for Persons Assigned to Duty on board the 'U.S.S. Pueblo' Captured by Military Forces of North Korea; for Civilian American Citizens Captured or Who Went into Hiding to Avoid Capture or Internment in Southeast Asia During the Vietnam Conflict and, in Case of Death of any Such Person, for Their Survivors."

§ 505.4 Place of filing claims.

Claims must be mailed or delivered in person to the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

§ 505.5 Documents to accompany forms.

All claims filed pursuant to sections 5(a) and 6(f) of the Act must be accompanied by evidentiary documents, instruments, and records as outlined in the instruction sheet attached to the claim form.

§ 505.6 Receipt of claims.

(a) *Claims deemed received.* A claim shall be deemed to have been received by the Commission on the date postmarked, if mailed, or if delivery is made in person, on the date of delivery at the offices of the Commission in Washington, DC.

(b) *Claims developed.* In the event that a claim has been so prepared as to preclude processing thereof, the Commission may request the claimant to furnish whatever supplemental evidence, including the completion and execution of an official claim form, as may be essential to the processing thereof. In case the evidence or official claim form requested is not returned within the time which may be designated by the Commission, the claim may be deemed to have been abandoned and may be disallowed.

PART 506—PROVISIONS OF GENERAL APPLICATION

Sec.

506.1 Persons eligible to file claims.
506.2 Persons under legal disability.
506.3 Definitions applicable under the Act.

AUTHORITY: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

SOURCE: 52 FR 17569, May 11, 1987, unless otherwise noted.

§ 506.1 Persons eligible to file claims.

Persons eligible to file claims with the Commission under the provisions of sections 5(i) and 6(f) of the War Claims Act of 1948, as amended, are:

(a) Civilian American citizens captured and held in Southeast Asia or their eligible survivors, under the provisions of section 5(i) of the Act; and

(b) Members of the Armed Forces of the United States held as prisoners of war during the Vietnam conflict or their eligible survivors, under section 6(f) of the Act.

§ 506.2 Persons under legal disability.

(a) Claims may be submitted on behalf of persons who, being otherwise eligible to make claims under the provisions of sections 5(i) and 6(f), are incompetent or otherwise under any legal disability, by the natural or legal guardian, committee, conservator, curator, or any other person, including the spouse of such claimant, whom the Commission determines is charged with the care of the claimant.

(b) Upon the death of any individual for whom an award has been made, the Commission may consider the initial application filed by or in behalf of the decedent as a formal claim for the purpose of reissuing the award to the next eligible survivor in the order of preference as set forth under sections 5(i) and 6(d)(4) of the Act.

§ 506.3 Definitions applicable under the Act.

"Child" means:

(1) A natural or adopted son or daughter of a deceased prisoner of war or a deceased civilian prisoner of war or a deceased American citizen including any posthumous son or daughter of such deceased person.

(2) Any son or daughter of such deceased person born out of wedlock will be deemed to be a child of such deceased for the purpose of this Act, if, (i) legitimated by a subsequent marriage of the parents, (ii) recognized as

a child of the deceased by his or her admission, or (iii) so declared by an order or decree of any court of competent jurisdiction.

"Husband" means the surviving male spouse of a deceased prisoner of war or of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place entered into.

"Natural guardian" means father and mother who shall be deemed to be the natural guardians of the person of their minor children. If either dies or is incapable of action, the natural guardianship of the person shall devolve upon the other. In the event of death or incapacity of both parents, then such blood relative, paternal or maternal, standing in loco parentis to the minor shall be deemed the natural guardian.

"Parent" means:

(1)(i) The natural or adoptive father or mother of a decreased prisoner of war, or any person standing in loco parentis to such deceased person, for a period of not less than 1 year immediately preceding the date of such person's entry into active service and during at least 1 year of such person's minority. Not more than one mother and/or father as defined shall be recognized in any case. A person will not be recognized as standing in loco parentis if the natural parents or adoptive parents are living, unless there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the natural or adoptive parent or parents prior to entry into active service by the deceased prisoner or war;

(ii) An award in the full amount allowable had the deceased prisoner of war survived may be made to only one parent when it is shown that the other parent has died or if there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the other parent.

(2) The father of an illegitimate child will not be recognized as such for purposes of the Act unless evidence establishes that (i) he has legitimated the child by subsequent marriage with the mother; (ii) recognized the child as his by written admission prior to enlistment of the deceased in the armed forces or entry into an overseas duty status; or (iii) prior to death of the child he has been declared by decree of a court of competent jurisdiction to be the father.

"Widow" means the surviving female spouse of a deceased prisoner of war or a deceased civilian American citizen who was married to the deceased at the time of his death by marriage valid under the applicable law of the place where entered into.

PART 507—ELIGIBILITY REQUIREMENTS FOR COMPENSATION

Subpart A—Civilian American Citizens

507.1 "Civilian American citizen" defined.
507.2 Other definitions.
507.3 Rate of benefits payable.
507.4 Survivors entitled to award of detention benefits.
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Subpart B—Prisoners of War

507.10 Vietnam conflict.
507.11 "Prisoner of war" defined.
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507.13 "Armed Forces of the United States" defined.
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AUTHORITY: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

SOURCE: 52 FR 17570, May 11, 1987, unless otherwise noted.

Subpart A—Civilian American Citizens

§ 507.1 "Civilian American citizen" defined.

"Civilian American citizen" means any person who, being then a citizen of the United States, was captured in Southeast Asia during the Vietnam conflict by any force hostile to the United States, or who went into hiding in Southeast Asia in order to avoid capture or internment by any such hostile force.

§ 507.2 Other definitions.

"Calendar month" means the period of time between a designated day of any given month and the date preceding a similarly designated day of the following month.

"Citizen of the United States" means a person who under applicable law acquired citizenship of the United States by birth, by naturalization, or by derivation.

"Dependent husband" means the surviving male spouse of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place where entered into.

"Force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

"Southeast Asia" means but is not necessarily restricted to, the areas of North and South Vietnam, Laos, and Cambodia.

"Went into hiding" means the action taken by a civilian American citizen when such person initiated a course of conduct consistent with an intention to evade capture or detention by a hostile force in Southeast Asia.

§ 507.3 Rate of benefits payable.

Detention benefits awarded to a civilian American citizen will be paid at the rate of $150 for each calendar month of internment or during the period such civilian American citizen went into hiding to avoid capture and internment by a hostile force. Awards shall take account of fractional parts of a calendar month.

§ 507.4 Survivors entitled to award of detention benefits.

In case of death of a civilian American citizen who would have been entitled to detention benefits under the War Claims Act of 1948, as amended, such benefits shall be awarded, if claim is made, only to the following persons:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;

(c) The child or children of the deceased in equal shares if there is no widow or dependent husband, if otherwise qualified.

§ 507.5 Persons not eligible to award of civilian detention benefits.

An individual is disqualified as a "civilian American citizen" under the Act, and thus is precluded from receiving an award of detention benefits, if such person:

(a) Voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force; or

(b) While detained, was a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

Subpart B—Prisoners of War

§ 507.10 Vietnam conflict.

"Vietnam conflict" refers to the period beginning February 28, 1961, and ending on a date to be determined by Presidential proclamation or concurrent resolution of the Congress.

§ 507.11 "Prisoner of war" defined.

"Prisoner of war" means any regularly appointed, enrolled, enlisted or inducted member of the Armed Forces of the United States who was held by any force hostile to the United States for any period of time during the Vietnam conflict.

§ 507.12 Membership in the Armed Forces of the United States; establishment of.

Regular appointment, enrollment, enlistment or induction in the Armed Forces of the United States shall be established by certification of the Department of Defense.

§ 507.13 "Armed Forces of the United States" defined.

"Armed Forces of the United States" means the United States Air Force, Army, Navy, Marine Corps and Coast Guard, and commissioned officers of the U.S. Public Health Service who were detailed for active duty with the Armed Forces of the United States.

§ 507.14 "Force hostile to the United States" defined.

"Force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

§ 507.15 Geneva Convention of August 12, 1949.

The Geneva Convention of August 12, 1949, as identified in section 6(f) of the War Claims Act of 1948, as amended, is the "Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949" which is included under the "Geneva Convention of August 12, 1949 For the Protection of War Victims", entered into by the United States and other governments, including the Government in North Vietnam which acceded to it on June 28, 1957.

§ 507.16 Failure to meet the conditions and requirements prescribed under the Geneva Convention of August 12, 1949.

For the purpose of this part, obligations under the Geneva Convention of August 12, 1949, consist of the responsibility assumed by the contracting parties thereto with respect to prisoners of war within the meaning of the Convention, to comply with and to fully observe the provisions of the Convention, and particularly those articles relating to food rations of prisoners of war, humane treatment, protection, and labor of prisoners of war, and the failure to abide by the conditions and requirements established in such Convention by any hostile force with which the Armed Forces of the United States were engaged in armed conflict.

§ 507.17 Rate of and basis for award of compensation.

(a) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(2) of the War Claims Act of 1948, as amended, will be paid at the rate of $2 per day for each day such person was held as prisoner of war on which the hostile force, or its agents, failed to furnish the quantity and quality of food prescribed for prisoners of war under the Geneva Convention of August 12, 1949.

(b) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(3) of the Act, will be paid at the rate of $3 per day for each day such person was held as a prisoner of war on which the hostile force failed to meet the conditions and requirements under the provisions of the Geneva Convention of August 12, 1949 relating to labor of prisoners of war or for inhumane treatment by the hostile force by which such person was held.

(c) Compensation under paragraphs (a) and (b) of this section will be paid to the prisoner of war or qualified applicant on a lump-sum basis at a total rate of $5 per day for each day the prisoner of war was entitled to compensation.

§ 507.18 Entitlement of survivors to award in case of death of prisoner of war.

In case of death of a prisoner of war who would have been entitled to an award of compensation under section 6(f) (2) and (3) of the War Claims Act of 1948, as amended, such compensation shall be awarded, if claim is made, only to the following persons:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(c) child or children of the deceased (in equal shares) if there is no widow or husband; and

(d) Parents (in equal shares) if there is no widow, husband or child.

§ 507.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.

Any member of the Armed Forces of the United States, who at any time, voluntarily, knowingly, and without duress gave aid to or collaborated with, or in any manner served any force hostile to the United States, is precluded from receiving an award of compensation based on such member's capture and internment.

PART 508—PAYMENT

Sec.
508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91-289.
508.2 Payments to persons under legal disability.
508.3 Reissuance of awards.

Authority: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001).

Source: 52 FR 17572, May 11, 1987, unless otherwise noted.

§ 508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91-289.

(a) Upon a determination by the Commission as to the amount and validity of each claim filed pursuant to section 5(i) and 6(f) of the War Claims Act of 1948, as amended, any award made thereunder will be certified by the Commission to the Secretary of the Treasury for payment out of funds appropriated for this purpose, in favor of the civilian internee or prisoner of war found entitled thereto.

(b) Awards made to survivors of deceased civilian internees or prisoners of war will be certified to the Secretary of the Treasury for payment to the individual member or members of the class or classes of survivors entitled to receive compensation in the full amount of the share to which each survivor is entitled, and if applicable, under the procedure set forth in § 508.3, except that as to persons under legal disability, payment will be made as specified in § 508.2.

§ 508.2 Payments to persons under legal disability.

Any awards or any part of an award payable under sections 5(i) and 6(f) of the Act to any person under legal disability may, in the discretion of the Commission, be certified for payment for the use of the claimant, to the natural or legal guardian, committee, conservator or curator, or if there is no such natural or legal guardian, committee, conservator or curator, then, in the discretion of the Commission, to any person, including the spouse of such person, or the Chief Officer of the hospital in which the claimant may be a patient, whom the Commission may determine is charged with the care of the claimant. In the case of a minor, any part of the amount payable may, in the discretion of the Commission, be certified for payment to such minor.

§ 508.3 Reissuance of awards.

Upon the death of any claimant entitled to payment of an award, the Commission will cause the award to be cancelled and the amount of such award will be redistributed to the survivors of the same class or to members of the next class of eligible survivors, if appropriate, in the order of preference as set forth under the Act.

PART 509—HEARINGS

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Authority: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

Source: 52 FR 17572, May 11, 1987, unless otherwise noted.

§ 509.1 Basis for hearing.

Any claimant whose application is denied or is approved for less than the full allowable amount of such claim, shall be entitled to a hearing before the Commission or its representative with respect to such claim. Hearings may also be held on the Commission's own motion.

§ 509.2 Request for hearing.

Within 30 days after the Commission's notice of denial of a claim, or approval for a lesser amount than claimed, has been posted by the Commission, the claimant, if a hearing is desired, shall notify the Commission in writing, and shall set forth in such request the reasons in full for requesting the hearing, including any statement of law or facts upon which the claimant relies.

§ 509.3 Notification to claimant.

Upon receipt of such a request the Commission shall schedule a hearing and notify the claimant as to the date and place such hearing is to be held. No later than 10 days prior to the scheduled hearing date, the claimant shall submit all documents, briefs, or other additional evidence relative to an appeal from the award.

§ 509.4 Failure to file request for hearing.

The failure to file a request for a hearing within the period specified in § 509.2 will be deemed to constitute a waiver of right to such hearing and the decision of the Commission shall constitute a full and final disposition of the case.

§ 509.5 Purpose of hearing.

(a) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of an unjust or unfounded claim or portion thereof, and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(b) Such hearings may be stenographically recorded either at the request of the claimant or at the discretion of the Commission. A claimant making such a request shall notify the Commission at least 10 days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

(c) Such hearings shall be open to the public.

§ 509.6 Résumé of hearing, preparation of.

Upon such hearing, the hearing officer shall prepare a résumé of the hearing, specifying the issues on which the hearing was based, and including a list of documents and contents and other items relative to such issues which were introduced as evidence. A brief analysis of oral testimony shall also be prepared and included in such résumé of the hearing not stenographically reported.

§ 509.7 Action by the Commission.

After the conclusion of such hearing and a review of the résumé, the Commission may affirm, modify, or reverse its former action with respect to such claim, including a denial or reduction in the amount of the award theretofore approved. All findings of the Commission concerning the persons to whom compensation is payable, and the amounts thereof, are conclusive and not reviewable by any court.

§ 509.8 Application of other regulations.

To the extent they are not inconsistent with the regulations set forth under provisions of this subchapter, the other regulations of the Commission shall also be applicable to the claims filed hereunder.

SUBCHAPTER C—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

PART 531—FILING OF CLAIMS AND PROCEDURES THEREFOR

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AUTHORITY: Sec. 3, Pub. L. 81-455, 64 Stat. 12, as amended (22 U.S.C. 1622).

SOURCE: 52 FR 17572, May 11, 1987, unless otherwise noted.

§ 531.1 Time for filing.

Claims shall be filed as specified by the Commission by duly promulgated notice published in the FEDERAL REGISTER, or as specified in legislation passed by Congress, as applicable.

§ 531.2 Form, content and filing of claims.

(a) Unless otherwise specified by law, or by regulations published in the FEDERAL REGISTER, claims shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its office at 1111 20th Street, NW., Washington, DC 20579; shall include all of the information called for in the appropriate form; and shall be completed and signed in accordance with the instructions accompanying the form.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing a claims program or the effective date of a lump-sum claims settlement agreement, of an intention to file a claim against a foreign country, shall *not* be considered as a timely filing of a claim under the statute or agreement.

(c) Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

§ 531.3 Exhibits and documents in support of claim.

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents, or copies or originals certified as such by their public or other official custodian.

(b) *Documents in a foreign language.* Each copy of a document, exhibit or paper filed, which is written or printed in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) *Preparation of papers.* All claims, briefs, and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

§ 531.4 Acknowledgement and numbering.

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

§ 531.5 Procedure for determination of claims.

(a) The Commission may on its own motion order a hearing upon any claim, specifying the questions to which the hearing shall be limited.

(b) Without previous hearing, the Commission or a designated member of the staff may issue a Proposed Decision in determination of a claim.

(c) Such Proposed Decision shall be delivered to the claimant or the claimant's attorney of record in person or by mail. Delivery by mail shall be deemed completed 5 days after the mailing of such Proposed Decision addressed to the last known address of the claimant or the claimant's attorney of record. A copy of the Proposed Decision shall be available for public inspection at the offices of the Commission.

(d) It shall be the policy of the Commission to post on a bulletin board any information of general interest to claimants before the Commission.

(e) When the Proposed Decision denies a claim in whole or in part, the claimant may within 15 days of service thereof file objections to such denial, assigning the errors relied upon, with accompanying brief in support thereof, and may request a hearing on the claim, specifying whether for the taking of evidence or only for the hearing of oral argument upon the errors assigned.

(f) Copies of objections to or requests for hearings on Proposed Decisions shall be available for public inspection at the Commission's offices.

(g) Upon the expiration of 30 days after service or receipt of notice, if no objection under this section has in the meantime been filed, a staff Proposed Decision, upon approval by the Commission, shall become the Commission's final determination and decision on the claim. A Proposed Decision issued by the Commission may become final after 30 days without further order or decision by the Commission.

(h) If an objection has in the meantime been filed, but no hearing requested, the Commission may, after due consideration thereof, (1) issue a Final Decision affirming or modifying its Proposed Decision, (2) issue an Amended Proposed Decision, or (3) on its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or only for the hearing of oral arguments.

(i) After the conclusion of a hearing, upon the expiration of any time allowed by the Commission for further submissions, the Commission may proceed to issue a Final Decision in determination of the claim.

(j)(1) In case an individual claimant dies prior to the issuance of the Final Decision, such person's legal representative shall be substituted as party claimant. However, upon failure of a representative to qualify for substitution, the Commission may issue its decision in the name of the estate of the deceased and, in case of an award, certify the award in the same manner to the Secretary of the Treasury for payment, if the payment of such award is provided for by statute.

(2) Notice of the Commission's action under this paragraph shall be forwarded to the claimant's attorney of record, or if the claimant is not represented by an attorney, such notice shall be addressed to the estate of the claimant at the last known place of residence.

(3) The term "legal representative" as applied in this paragraph means, in general, the administrator or executor, heir(s), next of kin, or descendant(s).

(k) After the date of filing with the Commission no claim shall be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute.

(l) At any time after a final Decision has been issued on a claim, or a Proposed Decision has been entered as the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition shall be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the Final Decision or the date on which the Proposed Decision was entered as the Final Decision; that it was not for want of due diligence that such evidence did not come sooner to the claimant's knowledge;' and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of such evidence would produce a different decision. Such petition shall include a statement of the facts which the petitioner expects to prove, the name and address of each witness, the identity of documents, and the reasons for failure to make earlier submission of the evidence.

§ 531.6 Hearings.

(a) Hearings, whether upon the Commission's own motion or upon request of claimant, shall be held upon not less than fifteen days' notice of the time and place thereof.

(b) Such hearings shall be open to the public unless otherwise requested by claimant and ordered by the Commission.

(c) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practices, may be offered in evidence on the claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(d) The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his or her claim.

(e) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. A claimant making such a request shall notify the Commission at least ten (10) days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

§ 531.7 Presettlement conference.

The Commission on its own motion or initiative, or upon the application of a claimant for good cause shown, may direct that a presettlement conference be held with respect to any issue involved in a claim.

CHAPTER VI—NATIONAL SCIENCE FOUNDATION

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PART 601—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

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AUTHORITY: E.O. 12356, 43 FR 14874, Apr. 2, 1982.

SOURCE: 47 FR 57284, Dec. 23, 1983, unless otherwise noted.

§ 601.1 Purpose.

Pursuant to Executive Order 12356 and Information Security Oversight Office Directive No. 1, the National Science Foundation [Foundation] issues the following regulations. The regulations identify the information to be protected, prescribe classification, declassification, downgrading, and safeguarding procedures to be followed, and establish a monitoring system to ensure the regulations' effectiveness.

§ 601.2 Classification authority.

The Foundation does not have original classification authority under Executive Order 12356. In any instance where a Foundation employee develops information that appears to warrant classification because of its national security character, the material will be afforded protection and sent to the Division of Administrative Services (DAS). Upon determination that classification is warranted, DAS will submit such material to the agency that has appropriate subject matter interest and classification authority.

§ 601.3 Security program.

The Director, Division of Administrative Services, is responsible for conducting a security program that ensures effective implementation of Executive Order 12356, to include:

(a) Maintaining active training and orientation programs for employees concerned with classified information or material.

(b) Encouraging Foundation personnel to challenge those classification decisions they believe to be improper.

(c) Issuing directives that ensure classified information is used, processed, stored, reproduced and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

(d) Recommending to the Director appropriate administrative action to correct abuse or violation of any provision of these regulations, including notification by warning letters, formal reprimand, and to the extent permitted by law, suspension without pay and removal.

§ 601.4 Classification Review Committee.

The Security Officer (Information) chairs the Foundation's Classification Review Committee which has authority to act on all suggestions and complaints with respect to the Foundation's administration of the regulations. The Assistant Directors and the Heads of other offices reporting to the Director serve as members of the Committee. All suggestions and complaints including those regarding overclassification, failure to classify, or delay in declassifying not otherwise resolved, shall be referred to the Committee for resolution. The Committee shall establish procedures to review and act within 30 days upon all appeals regarding requests for declassification. The Committee is authorized to overrule previous determinations in whole or in part when in its judgment, continued protection is no longer required. If the Committee determines that continued classification is required under the criteria of the Executive Order, it shall promptly so notify the requester and advise him that he may file an application for review with the Foundation. In addition, the Committee shall review all appeals of requests for records under section 552 of Title 5 U.S.C. (Freedom of Information Act) when the proposed denial is based on their continued classification under Executive Order 12356.

§ 601.5 Derivative classification.

Distinct from "original" classification is the determination that information is in substance the same as information currently classified, because of incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the marking of the source information. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(a) If a person who applies derivative classification markings believes that the paraphrasing, restating, or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult for a determination an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade, or declassify the information.

(b) The person who applies derivative classification markings shall observe and respect original classification decisions; and carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

§ 601.6 Downgrading and declassification.

Executive Order 12356 prescribes a uniform system for classifying, declassifying, and safeguarding national security information.

(a) Information shall be declassified or downgraded as soon as national security considerations permit. The National Science Foundation shall coordinate their review of classified information with other agencies that have a direct interests in the subject matter. Information that continues to meet the classification requirements prescribed by Section 1.3 despite the passage of time will continue to be protected in accordance with Executive Order 12356.

(b) Foundation documents may be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing by the Director.

(c) The Director shall conduct internal systematic review programs for classified information originated by the Foundation contained in records determined by the Archivist to be permanently valuable but that have not been accessioned into the National Archives of the United States.

(d) The Archivist of the United States shall, in accordance with procedures and timeframes prescribed in the Information Security Oversight Office's directives implementing E.O. 12356, systematically review for declassification or downgrading, classified records accessioned into the National Archives of the United States. Such information shall be reviewed by the Archivist for declassification or downgrading in accordance with systematic review guidelines that shall be provided by the head of the agency that originated the information, or in the case of foreign government information, by the Director of Information Security Oversight Office in consultation with interested agency heads.

§ 601.7 Mandatory declassification review.

(a) The Division of Administrative Services is hereby designated as the office to which members of the public or Departments may direct requests for mandatory review for declassification under this provision. In the case of documents originally classified by the Foundation, this office shall, in turn, assign the request to the appropriate office for action within 60 days. In each instance, receipt of the request will be acknowledged in writing immediately by the office that has been assigned action. A request for classification review must reasonably describe the document.

(b) Whenever a request is deficient in its description of the record sought, the requester should be asked to provide additional identifying information to the extent possible. Whenever a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken. Upon a determination that the requested material no longer warrants classification, it shall be declassified and made promptly available to the requester, if not otherwise exempt from disclosure under 5 U.S.C. 552(b) (Freedom of Information Act) or other provision of law. If the information may not be released in whole or in part the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination of the Classification Review Committee, and a notice that such an appeal must be filed with the Foundation within 60 days in order to be considered.

(c) When the request relates to a document given derivative classification by the Foundation or originated by another agency, the request and the document will be forwarded to the originator of the source document, and the requestor notified of such referral.

(d) Employees presently cleared for access to classified information are encouraged to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. Such challenges should be brought to the attention of the Security Officer (Information) who will act thereon within 30 days, informing the challenger of actions taken. Requests for confidentiality will be honored.

§ 601.8 Access to classified materials.

No person may be given access to classified information unless that person has been determined to be trustworthy and unless access is essential to the accomplishment of lawful and authorized Government purposes.

§ 601.9 Access by historical researchers and former Presidential appointees.

The requirement in § 601.8 that access to classified information may be granted only as is essential to the accomplishment of lawful and authorized Government purposes may be waived for persons who are engaged in historical research projects, or previously have occupied policymaking positions to which they were appointed by the President, provided they execute written agreements to safeguard the information and written consent to the Foundation's review of their notes and manuscripts solely for the purpose of determining that no classified information is disclosed. A precondition to any such access is the favorable completion of an appropriate investigative inquiry.

PART 602—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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Subpart A—General

§ 602.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 602.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 602.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 602.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 602.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 602.4(a) (3) through (8) are subject to Subpart E.

§ 602.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 602.6.

§ 602.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 602.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 602.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 602.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 602.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the develop-

ment of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 602.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 602.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 602.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
Educational institutions	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OBM Circular A–122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 602.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 602.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 602.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 602.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 602.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 602.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 602.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 602.31 and 602.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 602.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7507) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 602.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 602.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 602.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 602.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 602.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 602.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property

under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 602.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 602.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 602.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 602.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 602.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 602.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 602.36 Procurement.

(a) *States*. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards*. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the fol-

lowing: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition*. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 602.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 602.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element

of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 602.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a

bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in

compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 602.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 602.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 602.10;

(2) Section 602.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 602.21; and

(4) Section 602.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 602.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 602.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 602.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 602.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 602.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 602.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 602.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 602.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 602.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 602.41(b)(2).

§ 602.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 602.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the

grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 602.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or ex-

pired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 602.35).

§ 602.44 Termination for convenience.

Except as provided in § 602.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 602.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 602.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 602.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 602.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 602.42;

(d) Property management requirements in §§ 602.31 and 602.32; and

(e) Audit requirements in § 602.26.

§ 602.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706).

SOURCE: 47 FR 8573, Mar. 1, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 605.0 Adoption of HHS regulations.

The regulations of the Department of Health and Human Services on Nondiscrimination on the Basis of Handicap, 45 CFR Part 605, including any amendments thereto, have been adopted almost in their entirety to programs and activities receiving Federal financial assistance from the National Science Foundation. The few changes in the Foundation's rules include a newly added sub-paragraph (5) to paragraph (k) of § 605.3; and modifications in paragraph (j), § 605.3; paragraph (a) of § 605.5; paragraph (b) of § 605.46; and § 605.61. Paragraph (c) of § 605.5 has been removed, and "qualified handicapped persons" has been substituted for "handicapped persons" wherever that phrase appears in § 605.4(b)(5) and in Subpart C (§§ 605.21 through 605.23). The date for compliance with § 605.33(d) has been changed.

§ 605.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 605.2 Application.

This part applies to each recipient of Federal financial assistance from the National Science Foundation and to each program or activity that receives or benefits from such assistance.

§ 605.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Foundation" means the National Science Foundation.

(e) "Director" means the Director of the National Science Foundation.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Foundation official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Foundation provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person."

(1) "Handicapped persons" means any person in the United States who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(5) With respect to scientific and technical experimentation, observation, or field work a person who meets the academic, scientific and technical standards for participation and any reasonable physical qualifications for participation. Physical qualifications are not "reasonable," however, if they can be obviated without unreasonable burden by modifying facilities or programs or by providing auxiliary aids. In determining whether the burdens are unreasonable, factors such as cost, risks, or sacrifice of legitimate program objectives may be considered. In exceptional cases psychological qualifications may be considered 'reasonable physical qualifications' under this paragraph. Nothing in this provision or these regulations requires reversal of scientific judgments on research, including choice of experiments, protocols for experiments, location of observing sites, or the like that are considered necessary to any line of scientific inquiry by the research scientists involved.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 605.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding qualified handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to qualified handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 605.5 Assurances required.

(a) Assurances. Recipients of Federal financial assistance under a program or activity to which this part applies will assure NSF, in a manner specified by the Director, that the programs will be operated in compliance with this part.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide person-

al property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

§ 605.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested person consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and any remedial steps taken.

§ 605.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 605.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applications, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 605.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 605.9 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 605.7 and 605.8, in whole or in part, when the Director finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class or recipients to provide benefits or services.

§ 605.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 605.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 605.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification or equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 605.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection critierion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 605.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 605.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 605.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 605.15—605.20 [Reserved]

Subpart C—Program Accessibility

§ 605.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 605.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to qualified handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by qualified handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 605.23, or any other methods that result in making its program or activity accessible to qualified handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a qualified handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the qualified handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including qualified handicapped persons or organizations representing qualified handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to qualified handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usuable by qualified handicapped persons.

§ 605.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by qualified handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by qualified handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971)) [1] which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

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[1] Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

NOTE: Incorporation by reference provisions approved by the Director of the FEDERAL REGISTER on March 1, 1982.

§§ 605.24—605.30 [Reserved]

Subpart D—Preschool, Elementary, and Secondary Education

§ 605.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 605.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians or the recipient's duty under this subpart.

§ 605.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 605.34, 605.35 and 605.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and § 605.34, a free appropriate public education to a handicapped person and the person's parents or guardian chooses to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 605.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than July 1, 1983.

§ 605.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 605.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 605.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor

the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 605.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 605.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 605.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these service without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 605.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in

courses that are not separate or different.

§ 605.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 605.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 605.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of §§ 605.35 and 605.36. Each recipient to which this section applies is subject to the provisions of §§ 605.34, 605.37 and 605.38.

§ 605.40 [Reserved]

Subpart E—Postsecondary Education

§ 605.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 605.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 605.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 605.6(6), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies*. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 605.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 605.44 Academic adjustments.

(a) *Academic requirements*. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules*. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations*. In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendents, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 605.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 605.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that helps its students to obtain employment shall assure itself that the employment opportunities it helps to make available to students are, as a whole, made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 605.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 605.43(d) and only if

no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

§§ 605.48—605.50 [Reserved]

Subpart F—Health, Welfare, and Social Services

§ 605.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 605.52 Health, welfare, and other social services.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person which benefits or services that are not as effective (as defined in § 605.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Director may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 605.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment

ainst a drug or alcohol abuser or al-
holic who is suffering from a medi-
l condition, because of the person's
ug or alcohol abuse or alcoholism.

605.54 Education of institutionalized persons.

A recipient to which this subpart ap-
ies and that operates or supervises a
rogram or activity for persons who
re institutionalized because of handi-
ap shall ensure that each qualified
andicapped person, as defined in
605.3(k)(2), in its program or activity
provided an appropriate education,
s defined in § 605.33(b). Nothing in
his section shall be interpreted as al-
ering in any way the obligations of re-
ipients under Subpart D.

§ 605.55—605.60 [Reserved]

Subpart G—Procedures

605.61 Procedures.

The procedural provisions applicable
o Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 611.6 through 611.10 of this title (45 CFR). In the event that the Department of Education or the Department of Health and Human Services conducts a hearing under this part on behalf of NSF, the provisions of 45 CFR 84.61 shall also apply except that the Director of NSF or his designee shall also be "the responsible Department official" for purposes of 45 CFR 81.102 and 81.121 and "the reviewing authority" for purposes of 45 CFR 81.103, 81.104, and 81.105. Also, in such cases, the Director of NSF rather than the Secretary of HHS or Education shall conduct the review provided for in 45 CFR 81.106.

§§ 605.62—605.90 [Reserved]

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL SCIENCE FOUNDATION

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 54 FR 4791, Jan. 31, 1989, unless otherwise noted.

§ 606.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. Programs and activities receiving Federal financial assistance from the Foundation are covered by 45 CFR Part 605.

§ 606.3 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Foundation. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Foundation's alleged discriminatory action in sufficient detail to inform the Foundation of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Foundation" means the National Science Foundation.

"Individual with handicaps" means any person in the United States who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Foundation as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Foundation program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Foundation can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of

employment in 29 CFR 1613.702(f), which is made applicable to this part by § 606.40.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 606.4—606.9 [Reserved]

§ 606.10 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modifications.

(b) The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons who made comments;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 606.11 Notice.

The Foundation shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation and make such information available to them in such manner as the Director of the Foundation finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 606.12—606.29 [Reserved]

§ 606.30 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

(b)(1) The Foundation, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Foundation may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Foundation may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Foundation may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Foundation; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Foundation, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Foundation shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 606.31—606.39 [Reserved]

§ 606.40 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 606.41—606.49 [Reserved]

§ 606.50 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 606.51, no qualified individual with handicaps shall, because the Foundation's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

§ 606.51 Program accessibility: Existing facilities.

(a) *General.* The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.51(a) would result in such alter-

ation or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Foundation may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Foundation is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Foundation, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Foundation shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Foundation shall comply with the obligations established under this section within 60 days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Foundation shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Foundation's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 606.52 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 606.53—606.59 [Reserved]

§ 606.60 Communications.

(a) The Foundation shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Foundation communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Foundation shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Foundation shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.60 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 606.61—606.69 [Reserved]

§ 606.70 Complaint procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Opportunity (OEO), shall coordinate implementation of this section.

(d) Persons wishing to submit complaints should submit complete complaints (see § 606.03) to the Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Washington, DC 20550. In accordance with the procedures outlined below, the Foundation will accept all complete complaints and will either undertake to investigate them if they are within the jurisdiction of the Foundation and submitted within 180 days of the alleged acts of discrimination or in the case of complaints not within the jurisdiction of the Foundation, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity. Complete complaints submitted after the 180 day time limit may also be acted upon at the discretion of the Foundation if good cause for the delay in submission is found.

(e) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or a facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(f) Within 180 days of the receipt of a complete complaint, the Director, Office of Equal Opportunity (OEO), or his or her designee or delegate, will investigate the complaint and shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of a right to appeal to the Director of the Foundation.

(g)(1) A complainant may appeal findings of fact, conclusions of law, or remedies to the Director of the Foundation. Such appeals must be in writing and must state fully the basis for the appeal, proposed alternative findings of fact, conclusions of law, or remedies. They must be sent (as evidenced by an appropriate postmark or other satisfactory evidence) within 90 days after the date of receipt from the Foundation of the letter described in paragraph (f) of this section. The Foundation may extend this time for good cause.

(2) The Director shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Director determines that additional information is needed from the complainant, the Director shall have 30 days from the date such additional information is received from the complainant to make a determination on the appeal.

(h) The time limits for sending a letter to the complainant in paragraph (f) and for deciding an appeal in paragraph (g)(2) of this section may be extended with the permission of the Assistant Attorney General.

§§ 606.71—606.99 [Reserved]

PART 610—PROCEDURES AND CRITERIA FOR RESOLVING QUESTIONS INVOLVING MORAL CHARACTER OR LOYALTY OF APPLICANTS FOR AND HOLDERS OF NATIONAL SCIENCE FOUNDATION FELLOWSHIPS

Sec.
610.1 Purpose.
610.2 Definitions.
610.3 Separate consideration of professional or academic qualifications and affirmative declaration as to convictions or pending criminal charges and allegations or complaints by third parties.
610.4 Substantive criteria.
610.5 Procedures; Special Review Committee.
610.6 Final decision.

AUTHORITY: Sec. 11(a), 64 Stat. 153; 42 U.S.C. 1870.

SOURCE: 29 FR 14540, Oct. 23, 1964, unless otherwise noted.

§ 610.1 Purpose.

This part establishes procedures and criteria, including an opportunity for a hearing by a Review Board established pursuant to Part 630 of this title, for resolving questions arising as to whether the making or continuation of a National Science Foundation Fellowship award would not be in the best interests of the United States on grounds involving the moral character or loyalty of the applicant for, or holder of, such fellowship.

§ 610.2 Definitions.

(a) "Special Review Committee" (also referred to as "Committee") means a body composed of the following Foundation officials: The Deputy Director, as chairman, the Assistant Director for Science and Engineering Education and the General Counsel, together with such additional persons, if any, from sources within or outside the Foundation as may be designated from time to time by the Director.

(b) "Act" means the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861 through 1875).

(c) "Fellowship" (also referred to as "award") means an award made by the

Foundation to an individual under section 10 of the Act.

(d) The terms "Review Panel" and "Review board" refer to the Panel and Board defined in the regulations contained in Part 630 of this chapter.

(e) "Director" means the Director of the National Science Foundation.

(f) "Oath or affirmation of allegiance" means the oath or affirmation required under section 16(d)(1) of the Act.

[29 FR 14540, Oct. 23, 1964, as amended at 48 FR 44078, Sept. 27, 1983; 49 FR 37595, Sept. 25, 1984]

§ 610.3 Separate consideration of professional or academic qualifications and affirmative declaration as to convictions or pending criminal charges and allegations or complaints by third parties.

In order that objectivity may be maintained in the selection of candidates (and in any decisions as to termination of a fellowship) on the basis of scholarly achievement and potential, no advisory group or panel involved in making any recommendations as to the selection of persons for Fellowships, or in the making of any recommendations as to their retention as such Fellows, will be made aware of any affirmative or negative criminal declarations made pursuant to section 16(d)(1)(B) of the Act, nor of any other information (such as third-party allegations) other than that developed in connection with the submission and processing of the application for academic considerations.

§ 610.4 Substantive criteria.

(a) A Fellowship award will be denied or discontinued where: (1) The oath or affirmation of allegiance was not taken or cannot be taken in good faith; or (2) there is (i) a conviction of a crime involving moral turpitude, or (ii) conduct involving moral turpitude, unless in either case it is established that the applicant or fellowship holder is, nevertheless, now a person of good moral character.

(b) These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make it desirable.

§ 610.5 Procedures; Special Review Committee.

(a) Affirmative declarations made pursuant to section 16(d)(1)(B) of the Act or allegations and complaints by third parties pertaining to any individual who is the holder of a Fellowship or who has been tentatively selected for such a fellowship on the basis of academic consideration shall be referred to a Special Review Committee. This Committee will make recommendations to the Director as to whether there is substantial reason (pertaining to the moral character or loyalty of the individual concerned in accordance with § 610.4) for a belief that the making or continuation of the award would not be in the best interests of the United States. The Committee may supplement the information referred to it by such correspondence, personal interviews or other informal methods as may be necessary in order to make the aforementioned determination.

(b) If, after review of the recommendations of the Special Review Committee, the Director is of the opinion that there is substantial reason (pertaining to the moral character or loyalty of the individual concerned in accordance with § 610.4) for a belief that the making or continuation of the award would not be in the best interests of the United States, such individual shall be advised by written notice that a question or questions have arisen involving moral character or loyalty, and that upon request he will be afforded a hearing thereon in accordance with Foundation regulations. A copy of the regulations under this part and a copy of Part 630 of this chapter shall be enclosed with the notice, which shall, in addition, (1) set forth, in as much detail and as specifically as considerations of security may permit, the information raising the questions pertaining to moral character or loyalty and (2) advise that unless a request for a hearing is made within twenty days of the mailing of such notice, the matter will be referred to the National Science Board for a determination as to whether the fellowship should be denied or discontinued. If a hearing is requested, the case will be submitted by the Director to the Chairman of the Review Panel for handling in accordance with the regulations set forth in Part 630 of this chapter. The National Science Foundation is deemed to be the "constituent agency" within the meaning of § 630.2(e) of this chapter. "Applicable criteria" as defined in § 630.2(j) of this chapter refers to those set forth in § 610.4 and to manual or other issuances of the National Science Foundation pertaining to denial or discontinuance of fellowship awards on grounds involving moral character or loyalty.

§ 610.6 Final decision.

The initial decision of a Review Board shall be forwarded by the Director to the National Science Board, which shall then consider it and take such action thereon as it shall deem to be appropriate.

PART 611—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE NATIONAL SCIENCE FOUNDATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
611.1 Purpose.
611.2 Application of part.
611.3 Discrimination prohibited.
611.4 Assurances required.
611.5 Illustrative applications.
611.6 Compliance information.
611.7 Conduct of investigations.
611.8 Procedure for effecting compliance.
611.9 Hearings.
611.10 Decisions and notices.
611.11 Judicial review.
611.12 Effect on other regulations; forms and instructions.
611.13 Definitions.

APPENDIX A

AUTHORITY: Sec. 11(a), National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a); 42 U.S.C. 2000d-1.

SOURCE: 29 FR 16305, Dec. 4, 1964, unless otherwise noted.

§ 611.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Science Foundation.

§ 611.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Foundation, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contract, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 611.3. The fact that a program or activity is not listed in the Appendix shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 611.3 Discrimination prohibited.

(a) *General.* No person in the United States, shall, on grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program of an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training or (ii) to provide work experience which contributes to the education or training of such individuals.

(2) Programs listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons, including research associates, where in training for the same or related employments, have one of the above purposes as a primary purpose.

(3) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(4) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(3) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

§ 611.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal Financial assistance is extended pursuant to the application. The responsible Foundation official shall specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, struc-

tures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Foundation to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Foundation official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Foundation official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of the General Services Administration. (41 CFR 101-6.2.)

(b) *Elementary and secondary schools.* The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance the responsible Official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(c) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research for a special training project, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Foundation official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any

such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

§ 611.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the programs of the Foundation. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

1. In programs for support to elementary or secondary schools such as for the acquisition of equipment discrimination by the recipient school district in any of its elementary or secondary schools, or by the recipient private institution, in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustration the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

2. In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Foundation official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

3. In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution, discrimination is prohibited with respect to any educational activity, any provision of medical or other services and any financial aid to individuals incident to the program.

4. In grant programs to assist in the construction of facilities for research or for the provision of educational services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

5. Upon transfers of real or personal property for research or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

6. In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 611.6(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals which will insure that groups previously subjected to discrimination are adequately served but not the establishment of discriminatory qualifications for participation in any program.

7. Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

§ 611.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Foundation official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Foundation official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Foundation official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Foundation official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Foundation official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(Approved by the Office of Management and Budget under control number 3145-0087)

[29 FR 16305, Dec. 4, 1964, as amended at 49 FR 37595, Sept. 25, 1984]

§ 611.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Foundation official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Foundation official a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Foundation official.

(c) *Investigations.* The responsible Foundation official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this regulation, the responsible Foundation official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 611.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Foundation official will so inform the

recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 611.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 611.4.* If an applicant fails or refuses to furnish an assurance required under § 611.4 or otherwise fails to comply with that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Foundation shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such subsection, except that the Foundation shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The responsible Foundation official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means,

(2) There has been an express finding on the record, after opportunity for hearings, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part,

(3) The action has been approved by the Director pursuant to § 611.10(e) and

(4) The expiration of thirty days after the Director has filed with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Foundation official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least ten days from the mailing of such notice to the recipient or other person. During this period of at least ten days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973; 51 FR 22938, June 24, 1986]

§ 611.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 611.8(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than twenty days after the date of such notice within which the applicant or recipient may request of the responsible Foundation official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 611.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Foundation in Washington, DC, at a time fixed by the responsible Foundation official unless he determines that the convenience of the applicant or recipient or of the Foundation requires that another place be selected. Hearings shall be held before the responsible Foundation official or, at the discretion of the Director, a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Foundation shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554 through 557, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Foundation and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Director may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 611.10.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

§ 611.10 Decisions and notices.

(a) *Decision by a person or persons other than the responsible Foundation official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the responsible Foundation official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Foundation official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Foundation official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Foundation official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Foundation official.

(b) *Decisions on record or review by the responsible Foundation official.* Whenever, after hearing, a record is certified to the responsible Foundation official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Foundation official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Foundation official shall be given in writing to the applicant or recipient, and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 611.9(a), a decision shall be made by the responsible Foundation official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer, panel, or responsible Foundation official shall set forth the ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible Foundation official (other than the Director) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Director who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Foundation official that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Foundation official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Foundation official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Foundation official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Foundation official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973; 51 FR 22939, June 24, 1986]

§ 611.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 611.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Foundation which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 and regulation issued thereunder, or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Foundation official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Director may from time to time assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 611.10), including the achievement of effective coordination and maximum uniformity within the Foundation and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

§ 611.13 Definitions.

As used in this part:

(a) The term "Foundation" means the National Science Foundation, and includes each of its organizational units.

(b) The term "Director" means the Director of the National Science Foundation.

(c) The term "responsible Foundation official" with respect to any program receiving Federal financial assistance means the Director or other official of the Foundation designated by the Director.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or the donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity involving the provision of services, financial aid, or other benefits to individuals (including education or training, health, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Foundation official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

APPENDIX A

Statutory Provisions under which the National Science Foundation provides Federal financial assistance:

The National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875).
Title IX of the National Defense Education Act of 1958 (42 U.S.C. 1876 through 1879).
The National Sea Grant College and Program Act of 1966 (80 Stat. 998).[1]

[38 FR 17986, July 5, 1973]

PART 612—AVAILABILITY OF RECORDS AND INFORMATION

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AUTHORITY: 5 U.S.C. 552, as amended.

§ 612.1 Scope.

This part establishes procedures for the National Science Foundation (NSF) to implement the provisions of the Administrative Procedure Act (5 U.S.C. 552(a)) relating to the availability to the public of records of NSF.

[40 FR 12793, Mar. 21, 1975]

§ 612.2 Information policy.

(a) Subject to the policies set forth below, NSF will make the fullest possible disclosure of information to any person who requests information, without unnecessary expense or delay. The Deputy Director, NSF, may, in particular instances except where prohibited by law, order disclosure in the public interest of records exempt from mandatory disclosure under § 612.9 of this regulation.

(b) A collection of NSF policy documents, staff instructions, and of agency opinions and orders in the adjudication of cases, with respective indices, shall be physically located in the National Science Foundation library at 1800 G Street, NW., Washington, DC where they will be available for inspection by the public during regular working hours on Monday through Friday. Copies of such documents shall be furnished in accordance with these regulations.

(c) The Assistant Director for Administration (AD/A) shall be responsible for maintaining, publishing, distributing and making available for inspection and copying the current indexes and supplements thereto which are required by 5 U.S.C. 552(a)(2). Such indexes shall promptly be published, quarterly or more frequently, unless the ADA determines by order published in the FEDERAL REGISTER that the publication would be unnecessary. The fee for furnishing copies of indexes and supplements shall not exceed the direct cost of duplication.

[40 FR 12793, Mar. 21, 1975, as amended at 49 FR 23049, June 4, 1984; 49 FR 37595, Sept. 25, 1984]

§ 612.3 Procedures applicable to the public—requests and appeals.

(a) *Publications excluded.* For the purpose of public requests for records the term "record" does not include publications which are available to the public in the FEDERAL REGISTER, or by sale or free distribution. Such publications may be obtained from the Government Printing Office, the National Technical Information Service, the NSF Mail and Distribution Unit or NSF grantees or contractors. Requests for such publications will be referred to or the requester informed of the appropriate source. The booklet, Publications of the National Science Foundation, which is available without charge from the Mail and Distribution Unit, National Science Foundation, Washington, DC 20550, identifies Annual Reports, Descriptive Brochures, Program Announcements, Science Resources Studies, Special Studies, and

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[1] All the above programs listed are conducted pursuant to authority contained in the National Science Foundation Act of 1950, as amended, 42 U.S.C. 1861 through 1875.

Periodicals descriptive of Foundation activities, policies, and procedures, sets forth the cost of each, and tells how copies may be obtained.

(b) *Form of request.* A request need not be in any particular format, but it (1) must be in writing, (2) must be clearly identified both on the envelope and in the letter as a Freedom of Information Act or FOIA request, (3) must describe the records sought with sufficient specificity to permit identification, and (4) must state that the requester promptly will pay the fees chargeable under this regulation, Provided however, That when the requester places an inadequate limit on the amount he will pay or the requester has failed to make payment for previous requests, the notice of determination whether or not to comply with the request will be furnished within ten days as provided in § 612.7 of this regulation but no copies will be furnished until appropriate payment is received except in cases when fees have been waived or reduced in accordance with § 612.6(e). If the requester desires a waiver or reduction of fees, the requester may so request either at the time the request for information is submitted or after the Foundation notifies the requester of the amount of fees involved. If a request for a waiver or reduction of fees is made, the requester should include a statement why furnishing the information should be considered as primarily benefiting the general public.

(c) *Place of request.* Any request for a record under FOIA shall be addressed to the National Science Foundation, Office of Legislative and Public Affairs, 1800 G Street, NW., Washington, DC 20550. A request which meets the requirements of paragraph (a) of this section and is properly addressed shall be deemed received on the date of arrival in the NSF mailroom.

(d) *Time for appeal.* A person whose request has been denied or partially denied may initiate an appeal by filing a request for review within ten days of the receipt of the denial, Saturdays, Sundays, legal public holidays, and the date of receipt excluded.

(e) *Form of appeal.* The appeal shall include a copy of the written request and the denial together with any written argument the requester wishes to submit, and shall be signed by the requester.

(f) *To whom appeal is made.* An appeal shall be addressed to the Deputy Director, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

(g) *Decisions on appeal.* Decisions on appeal shall be made by the Deputy Director in writing within 20 days (excepting the date of receipt, Saturdays, Sundays, and legal public holidays) from receipt of the appeal. If the decision is in favor of the requester it shall order the record made available promptly to the requester. If adverse to the requester in whole or in part it shall briefly state the reasons and notify the requester that he may seek judicial review of the decision pursuant to paragraph (4) of section 552(a), Title 5, United States Code.

[40 FR 12793, Mar. 21, 1975, as amended at 49 FR 23049, June 4, 1984]

§ 612.4 Copies of records.

If a requested record is to be disclosed, a copy will be furnished the requester as promptly as possible provided payment of fees has been arranged for or waived pursuant to § 612.6. Records will not be released for copying.

[49 FR 23049, June 4, 1984]

§ 612.5 Creation of records.

A record will not be created by compiling selected items from other documents at the request of a member of the public nor will a record be created by analysis, computation or other processing specifically for the requesting party. If such analysis or computation is available in the form of a record, copies shall be made available as provided in this regulation.

[40 FR 12793, Mar. 21, 1975]

§ 612.6 [Reserved]

§ 612.7 Agency actions on receipt of a properly presented request for record.

(a) *Monitoring of requests.* The NSF Office of Legislative and Public Affairs, or such other office as may be designated by the Director will serve as central office for internal administration of these regulations. The Office of Legislative and Public Affairs, or such other office as may be designated by the Director will control incoming requests, assign them to appropriate action offices, monitor compliance, consult with action offices on disclosure, approve unavoidable extensions, dispatch denial letters, and maintain administrative records.

(b) *Time for response.* The Foundation will seek to take appropriate agency action on a request within 10 days of its receipt (excepting the date of receipt, Saturdays, Sundays, and legal public holidays). If the record may exist only in a retired file which has been placed in storage or there is otherwise a need to search for and collect the requested records from field facilities or other establishments that are separate from the Foundation, NSF shall immediately notify the requester by letter that the record has been ordered from storage (or is otherwise being sought) and that the time limit for acting on the request is extended by the length of time required to obtain the record. The letter will also give the date on which a determination is expected to be dispatched. If the request seeks a voluminous amount of separate and distinct records requiring an unusual length of time for search, collection, and appropriate examination, and determination on the request cannot be made within 10 working days after agency receipt, NSF shall within such ten-day period furnish to the requester written notice extending the period for not more than ten working days. This notice shall set forth the reasons for such extension and the date on which a determination is expected to be dispatched. If the record has not been obtained and examined and notice of the determination whether to comply with the request has not been given by the last day of the period as extended, the requester shall be notified on that last day that the request is denied because the record has not yet been found and examined. Such denial shall state that NSF will reconsider the denial as soon as the search and examination is complete, which should be within a specifically stated number of days, but that the requester may, if he wishes, file an administrative appeal as provided in § 612.3 of this regulation. This same procedure for extending the period shall be followed if the nature of the record requires consultation with another agency having a substantial interest in the determination of the request or requires consultation among two or more components of NSF having substantial subject-matter interest therein.

(c) When the requested record is a successful proposal that was submitted to the Foundation, the Foundation will normally contact the organization that submitted the proposal before releasing it in order to ask whether that organization wishes portions of the proposal withheld under any applicable exemptions. (The Foundation does not normally release pending proposals or unsuccessful proposals in any case.)

(d) *Denial of request.* No written request for record shall be denied except by the Director of the Office of Legislative and Public Affairs, or such other office as may be designated by the Director. Notice of the denial of a request shall briefly set forth the reasons therefor which shall be based solely upon one or more of the exemptions specified in § 612.9 of this regulation. Each notice of denial also shall set forth the names and title or positions of each person responsible for the denial and shall inform the requester of the right to appeal as provided in § 612.3 of the regulation.

(e) *Oral requests.* Nothing in these regulations shall be deemed to preclude NSF from honoring oral requests for information where feasible, but if the requester is dissatisfied with the disposition of such a request, he shall be asked to put the request in writing.

[40 FR 12793, Mar. 21, 1975, as amended at 49 FR 23050, June 4, 1984]

§ 612.8 Records not available.

(a) *Exemptions.* The following types of records are not normally available for inspection and copying:

(1) Records specifically authorized and in fact properly classified pursu-

ant to Executive Order to be kept secret in the interest of national defense or foreign policy.

(2) Records related solely to the internal personnel rules and practices of NSF. This exemption does not apply to rules relating to the work hours, leave, and working conditions of NSF personnel, or similar matters, to the extent that they can be disclosed without harm to the functions to which they pertain. Examples of exempt records of the type specified in the first sentence of this paragraph include, but are not limited to:

(i) Operating rules, guidelines, manuals on internal procedure, schedules and methods utilized by NSF auditors and examiners;

(ii) Negotiating positions and limitations involved in a negotiation prior to the execution of a contract or the completion of the action to which the negotiating positions or limitations were applicable except as they may be exempt pursuant to other provisions of this section.

(iii) Personnel policies, procedures and instructions, internal staffing plans, requirements, authorizations, controls, and supporting data relating to position management and manpower utilization and information involved in the determination of the qualifications of candidates for employment or advancement.

(3) Records specifically exempted from disclosure by statute such as 18 U.S.C. 1905 which prohibits disclosure of information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association. This also includes records that disclose any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) as provided in 35 U.S.C. 205.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. Matter subject to this exemption is that which is customarily held in confidence by the originator without regard to whether or not the originator is, or is not employed by, a nonprofit organization. It includes, but is not limited to:

(i) Information received in confidence, such as grant applications, fellowship applications and research proposals prior to award;

(ii) Statistical data or information if received in confidence from a contractor or potential contractor concerning contract performance, income, profits, losses, and expenditures.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NSF. To the extent not so available by law, examples include, but are not limited to:

(i) Reports, memoranda, correspondence, workpapers, minutes of meetings (other than those governed by the Federal Advisory Committee Act), and staff papers prepared for use within NSF or within the Executive Branch of the Government by personnel and consultants of NSF, or any Government agency.

(ii) Advance information on proposed NSF plans to procure, lease, or otherwise acquire, or dispose of materials, real estate, facilities, services or functions, when such information would provide undue or unfair competitive advantage to any person;

(iii) Records prepared for use in proceedings before any Federal or State court or administrative body;

(iv) Evaluations of and comments on specific grant applications, research proposals, or potential contractors, whether made by NSF personnel or by external reviewers acting either individually or in committees;

(v) Preliminary, draft unapproved recommendations, evaluations, and opinions, such as evaluations of invention disclosures, of research projects, and of incomplete studies conducted or supported by NSF;

(vi) Proposed budget requests and supporting projections used or arising in the preparation and/or execution of a budget; proposed annual and multiyear policy, priorities, program and financial plan and supporting papers.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Infor-

mation in such files which is not otherwise exempt from disclosure pursuant to other provisions of this section will be released to the subject or to his designated legal representative, and it may be disclosed to others with his written consent. Examples of personnel files exempt from disclosure include, but are not limited to, file containing reports, records and other materials pertaining to individual cases in which disciplinary or other administrative action has been or may be taken. Similar files include reports and evaluations which reflect upon the qualifications or competence of individuals. Opinions and orders resulting from those proceedings shall be disclosed without identifying details if used, cited, or relied upon as precedent.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person or a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Matters contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of any government agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(10) Records belonging to another government agency or dealing with subject matter as to which government agency, other than NSF, has exclusive or primary responsibility. Requests for such records shall be promptly forwarded to the appropriate government agency for disposition or for guidance with respect to disposition.

(b) *Deletion of exempt portion and identifying details.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. Whenever any final opinion, order, or other materials required to be made available relates to a private party or parties and the release of the name or names or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following as a preamble:

> Names of parties and certain other identifying details have been removed (and fictitious names substituted) in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

[40 FR 12793, Mar. 21, 1975, as amended at 47 FR 54943, Dec. 7, 1982. Redesignated at 49 FR 23050, June 4, 1984, and further amended at 52 FR 43073, Nov. 9, 1987]

§ 612.9 Fees to be charged—definitions.

For the purpose of these Guidelines:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by

conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information. Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. NSF shall ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, NSF shall not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section). Searches may be done manually or by computer using existing programming.

(e) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(f) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NSF shall determine the use to which a requester will put the documents requested. Moreover, where NSF has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, NSF shall seek additional clarification before assigning the request to a specific category.

(h) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(i) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (g) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(j) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but NSF may also look to the past publication record of a requester in making this determination.

[52 FR 43074, Nov. 9, 1987]

§ 612.10 Fees to be charged—general.

NSF shall charge fees that recoup the full allowable direct costs they incur. Moreover, NSF shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. NSF will contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, NSF shall ensure that the ultimate cost to the requester is no greater than it would be if NSF itself had performed these tasks. In no case will NSF contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. In addition, NSF shall ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in § 612.9(b), such as the NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* Whenever feasible, NSF shall charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), NSF may establish an average rate for the range of grades typically involved. Thus, for each one-quarter hour after the first quarter hour, for search of a record by clerical personnel, $1.25. For nonroutine, nonclerical search by professional personnel, for example, where the task of determining which records fall within a request and search requires professional or managerial time, the charge is $3.75 for each one-quarter hour spent in excess of the first quarter hour.

(b) *Computer searches for records.* NSF shall charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. When NSF can establish a reasonable agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, the Foundation will do so and charge accordingly.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time NSF spends reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the *initial* review; i.e., the review undertaken the first time NSF analyzes the applicability of a specific exemption to a particular record or portion of a record. NSF may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Where a single class of reviewers is typically involved in the review process, NSF may establish a reasonable agency-wide average and charge accordingly.

(d) *Duplication of records.* NSF shall establish an average agency-wide, per-page charge for paper copy reproduction of documents. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, NSF shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, NSF shall charge the actual direct costs of producing the document(s). For photocopies of documents, $0.10 per copy per page will be charged. In practice, if NSF estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of NSF. Neither the FOIA nor its fee structure cover these kinds of services. NSF shall recover the full costs of providing services such as those enumerated below to the extent that it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(f) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the Freedom of Information Act, as amended, requires NSF to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits NSF from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, NSF would not begin to assess fees until after they had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, NSF will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less that the cost to the agency of billing the requester and processing the fee collected, no charges would result.

The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the NSF of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the NSF's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and shall not be considered in the NSF's determination. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction. Similarly, the term "search time" in this context has as its basis *manual search.* To apply this term to searches made by computer, NSF shall determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent.

When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, NSF shall begin assessing charges for computer search.

[52 FR 43074, Nov. 9, 1987]

§ 612.11 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When a request for documents for commercial use is received, NSF shall assess charges which recover the full direct cost of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. NSF may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see paragraph (b) of this section.

(b) *Educational and non-commercial scientific institution requesters.* NSF shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* NSF shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in § 612.6.1 j of this part, and his other request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* NSF shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in NSF's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

[52 FR 43075, Nov. 9, 1987]

§ 612.12 Administrative actions to improve assessment and collection of fees.

NSF shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly by all components. To do so, NSF amends its FOIA regulations to conform to the provisions of this Fee Schedule and Guidelines, especially including the following elements:

(a) *Charging interest—notice and rate.* NSF may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. NSF shall ensure that their accounting procedures are adequate to properly credit a requester who has remitted the full amount within the time period. The fact that the fee has been received by the agency, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* NSF may assess charges for time spent searching, even if NSF fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if NSF estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* Except for requests that are for a commercial use, NSF shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NSF reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NSF may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a relatively short period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and NSF should have a basis for determining that aggregation is warranted in such cases.

(d) *Advance payments.* NSF shall not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The NSF estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, NSF should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the date of the billing), NSF may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the NSF begins to process a new request or a pending request from that requester.

(e) When NSF acts under paragraph (d) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after NSF has received fee payments described above.

[52 FR 43076, Nov. 9, 1987]

§ 612.13 Waivers or reductions.

(a) Employees of the National Science Foundation are encouraged to waive fees whenever the statutory fee waiver standard is met. However, employees are expected to respect the balance drawn in the statute, safeguarding federal funds by granting waivers or reductions only where it is determined that the following statutory standard is satisfied:

> Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b) NSF will employ the following six factors in determining when FOIA fees should be waived or reduced:

(1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(2) The informative value of the information to be disclosed: whether the

disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(c) NSF will use U.S. Department of Justice policy guidance in applying the foregoing factors.

[52 FR 43076, Nov. 9, 1987]

PART 613—PRIVACY ACT REGULATIONS

Sec.
613.1 Purpose and scope.
613.2 Procedures for notification of existence of records pertaining to individuals.
613.3 Procedures for requests for access to or disclosure of records pertaining to an individual.
613.4 Correction of records.
613.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.
613.6 Exemptions.

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 40 FR 44510, Sept. 26, 1975, unless otherwise noted.

§ 613.1 Purpose and scope.

This part sets forth the National Science Foundation procedures under the Privacy Act of 1974 as required by 5 U.S.C. 552a(f). Internal guidance for NSF staff and other regulations implementing the Privacy Act are contained or will be contained in NSF Circulars.

§ 613.2 Procedures for notification of existence of records pertaining to individuals.

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by the National Science Foundation are listed annually in the FEDERAL REGISTER as required by that Act. Any person who wishes to know whether a system of records contains a record pertaining to him may either appear in person at the NSF Division of Administrative Services at 1800 G Street, NW., Washington, DC 20550, on work days between the hours of 8:30 a.m. and 5:00 p.m. or may write to the NSF Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, DC 20550, it is recommended that requests be made in writing, since in many cases it will take several days to ascertain whether a record exists.

(b) Requests for notification of the existence of a record should specifically identify the system of records involved and should state, if the requester is other than the individual to whom the record pertains, the relationship of the requester to that individual. (Note that requests will not be honored by the Foundation pursuant to the Privacy Act unless made (1) by the individual to whom the record pertains, (2) by such individual's parent if the individual is a minor, or (3) by such individual's legal guardian if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction). In cases where the NSF Notice of the System appearing in the FEDERAL REGISTER states that the system location is decentralized the special instruction in such notice pertaining to "Notification" and "Access" and "Content" must be followed.

(c) The Foundation will attempt to respond to a request as to whether a record exists within 10 working days from the time it receives the request or from the time any required identification is established, whichever is later.

[40 FR 44510, Sept. 26, 1975, as amended at 49 FR 37595, Sept. 25, 1984]

§ 613.3 Procedures for requests for access to or disclosure of records pertaining to an individual.

(a) Any person may request review of records pertaining to him by appearing at the NSF Division of Administrative Services at 1800 G Street, NW., Washington, DC on work days between the hours of 8:30 a.m. and 5:00 p.m. or by writing to the NSF Privacy Act Officer, Assistant Director for Administration, NSF, Washington, D.C. 20550. (See paragraphs (b) and (c) of this section, for identification requirements.) The request should specifically identify the systems of records involved, and the request should include any special information specified in the notice of the system under "Notification" and "Access and Contest." The Foundation will strive either to make the record available within 15 working days of the request or to inform the requester of the need for additional identification or the tendering of fees (as specified in § 613.4(e)) within 15 working days; except that if the request for access was not preceded by a notification request as provided in § 613.2, then the 15-day period shall not begin until after such time as it has been determined that the record exists.

(b) In the case of persons making requests by appearing at the Foundation the amount of personal identification required will of necessity vary with the sensitivity of the record involved. Except as indicated below reasonable identification such as employment identification cards, drivers licenses, credit cards will normally be accepted as sufficient evidence of identity in the absence of any indications to the contrary. Records in the following systems of records, however, are considered to contain relatively sensitive and/or detailed personal information—

Employment Inquiries and Background Information;
Applicants to Committee on the Challenges and Modern Society Fellowship Program (NATO);
Confidential Statements of Employment and Financial Interests;
Congressional Contact Files;
Doctorate Records File;
Earnings and Tax Statements;
Employee Grievance and Appeals File;
Employee Payroll Jackets;
Equal Employment Opportunity Case File;
Fellowship and Traineeship Filing System;
Grants to Individuals;
Health Service Medical Records;
Intergovernmental Personnel Act Assignment Agreements;
Manpower Management Subsystem;
Medical Examination Records for Service in Antarctica;
Minority Applicants for Employment;
Nominees for and Recipients of the National Medal of Science;
NSF Payroll System;
Official Passports;
Official Personnel Folders;
Presidential Internships in Science and Engineering;
Science Education Participant Information Subsystem;
Separated Employees Service Record (SF7);
Student Science Training Program Participant Information;
Time and Attendance Reports;
U.S. Antarctic Research Program Personal Information;
U.S. Antarctic Research Program Field Participants;
Alien Applications for Consideration of Waiver of Two-Year Foreign Residence Requirements—NSF;
Reviewer/Panelist Information Subsystem; and
Nominees for and Recipients of the Alan T. Waterman Award Nomination File.

Accordingly, with respect to requests for records in these systems the Foundation reserves the right to require sufficient identification to identify positively the individual making the request. This might involve independent verification by the Foundation as by phone calls to determine whether an individual has made a request, personal identification by Foundation employees who know the individual, or such other means as are considered appropriate under the circumstances.

(c) A written request will be honored only if it contains the following certification before a duly commissioned notary public of any state or territory (or similar official if the request is made outside the United States):

I, ——————————, do hereby certify that I am the individual about whom the record requested in this letter pertains or that I am within the class of persons authorized to act on his behalf in accordance with 5 U.S.C. 552a(h).

____

(Signature)

____

(Date)

In the County of ____________________
State of ____________________
On this —— day of ————, 19—.

____

(Name of Individual)

who is personally known to me, did appear before me and sign the above certificate.

____

(Signature)

____

(Date)

(S) My commission expires ————.

However, where the record requested is contained in any of the systems of records listed in paragraph (b) of this section, the Foundation reserves the right to require additional identification and/or to independently verify to its satisfaction the identity of the requester.

(d) Charges for copies of records will be at the rate of $0.10 per photocopy of each page. Where records are not susceptible to photo-copying, e.g., punch cards, magnetic tapes or oversize materials, the amount charged will be actual cost as determined on a case-by-case basis. Only one copy of each record requested will be supplied. No charge will be made unless the charge as computed above would exceed $3.00 for each request or related series of requests. If a fee in excess of $25.00 would be required, the requester shall be notified and the fee must be tendered before the records will be copied.

(e) The procedures of paragraphs (a) through (d) of this section shall also apply to requests made pursuant to 5 U.S.C. 552a(c)(3) that accountings made under 5 U.S.C. 552a(c)(1) be made available.

[40 FR 44510, Sept. 26, 1975, as amended at 42 FR 8639, Feb. 11, 1977; 49 FR 37596, Sept. 25, 1984]

§ 613.4 Correction of records.

(a) Any individual is entitled to request amendments of records pertaining to him pursuant to 5 U.S.C. 552a(d)(2). Such a request shall be made in writing and addressed to the Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, DC 20550.

(b) The request should specify the record and systems of records involved, and should specify the exact correction desired and state that the request is made pursuant to the Privacy Act. An edited copy of the record showing the desired correction is desirable. Within 10 working days of the receipt of a properly addressed request (or within 10 working days of the time the Privacy Act Officer becomes aware that a particular communication not addressed as prescribed above is a request for correction of a record under the Privacy Act), the Privacy Act Officer shall acknowledge receipt of the request.

(c) The Privacy Act Officer upon the receipt of such a request shall promptly confer with the Directorate or office within the Foundation responsible for the record. In the event it is felt that correction is not warranted in whole or in part, the matter shall be brought to the attention of the General Counsel. If, after review by the General Counsel and discussion with the requester if deemed helpful, it is determined that correction as requested is not warranted, a letter shall be sent by the Privacy Act Officer to the requester denying his request and/or explaining what correction might be made if agreeable to the requester. This letter shall set forth the reasons for the refusal to honor the request for correction. It shall also inform him of his right to appeal this decision and include a description of the appeals procedure set forth in paragraph (d) of this section. Such letter or notification that the desired correction will be made shall normally be sent within 30 working days of the receipt of a properly addressed request (or within 30 working days of the time the Privacy Act Officer becomes aware that a particular communication not addressed as prescribed above is a request for correction of a record under the Privacy Act).

(d) An appeal may be taken from an adverse determination under paragraph (c) of this section, to the Deputy Director of the Foundation. Such appeal must be made in writing and should clearly indicate that it is an appeal. The basis for the appeal should be included, and it should be mailed to the same address as listed in paragraph (a) of this section. A hearing at the Foundation may be requested. Such hearing will be informal, and shall be before the Deputy Director or his designee. If no hearing is requested, the request for appeal should include the basis for the appeal. Where no hearing is requested the Deputy Director shall render his decision within thirty working days after receipt of the written appeal at the Foundation unless the Director, for good cause shown, extends the 30-day period and the appellant is advised in writing of such extension. If a hearing is requested, then the Foundation will attempt to contact the appellant within five working days and arrange a suitable time for the hearing. In such case the decision of the Deputy Director shall be made within 30 working days after the hearing unless the time is extended and the appellant is advised in writing of such extension.

(e) The final decision of the Deputy Director in an appeal shall be in writing and, if adverse to the appellant, set forth the reasons for the refusal to amend the record and advise him of his right to appeal the decision under 5 U.S.C. 552a(g)(1)(A). The individual shall also be notified that he has the right to file with the Foundation a concise statement setting forth the reasons for his disagreement with the refusal of the Foundation to amend his record.

[40 FR 44510, Sept. 26, 1975, as amended at 42 FR 8639, Feb. 11, 1977]

§ 613.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(a) Records required to be made available by the Freedom of Information Act will be released in response to a request formulated in accordance with NSF regulations found at 45 CFR Part 612.

(b) Records not required by the Freedom of Information Act to be released may be released, at the discretion of the Foundation, if the written consent of the individual to whom they pertain has been obtained or if such release would be authorized under 5 U.S.C. 552a(b)(1) or (3) through (11).

§ 613.6 Exemptions.

(a) *Fellowships and other support.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(d) any materials which would disclose the identity of references of fellowship applicants or reviewers of applicants for Federal contracts (including grants and cooperative agreements) contained in any of the following systems of records: (1) Fellowship and Traineeship Filing System, (2) Applicants to Committee on the Challenges of Modern Society Fellowship Program (NATO), and (3) Principal Investigator/Proposal File and Associated Records.

(b) *Applicants for Employment.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(d) any materials which would disclose the identity of references of applicants for employment at NSF contained in the system of records entitled "Official Personnel Folders."

[40 FR 44510, Sept. 26, 1975, as amended at 53 FR 42951, Oct. 25, 1988]

PART 614—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS OF THE NATIONAL SCIENCE BOARD

Sec.
614.1 General rule.
614.2 Grounds for closing meetings.
614.3 Materials relating to closed portions of meetings.
614.4 Opening of transcript or recording.
614.5 Public announcement.
614.6 Meeting changes.
614.7 Record vote.
614.8 Application to Board Executive Committee.

AUTHORITY: Government in the Sunshine Act, sec. 552b of Title 5, U.S.C.; 90 Stat. 1241.

SOURCE: 42 FR 14719, Mar. 16, 1977, unless otherwise noted.

§ 614.1 General rule.

Except as otherwise provided in these regulations, every portion of every meeting of the National Science Board will be open to public observation.

§ 614.2 Grounds for closing meetings.

(a) The National Science Board may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the National Science Foundation;

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires in such a manner as to leave no discretion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Is likely to involve accusing any person of a crime, or formally censuring any person;

(6) Is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(c)(7);

(8) Is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Is likely to disclose information, the premature disclosure of which would:

(i) In the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed Foundation action, unless the Foundation has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the Foundation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Anyone who believes his interests may be directly affected by a portion of a meeting may request that the Board close it to the public for any reason referred to in paragraphs (a) (5), (6), or (7) of this section. The request should be addressed to the National Science Board, National Science Foundation, Washington, DC 20550. It will be circulated to Members of the Board if received at least three full days before the meeting, and on motion of any Member the Board will determine by record vote whether to close the affected portion of the meeting.

§ 614.3 Materials relating to closed portions of meetings.

If a portion or portions of any meeting of the National Science Board are closed to the public under § 614.2:

(a) The General Counsel of the National Science Foundation shall publicly certify that, in his opinion, that portion or portions may properly be closed to the public. The certificate shall state the exemptions under 5 U.S.C. 552b(c) that make the closings proper.

(b) The presiding officer of the meeting (usually the Chairman of the Board) shall furnish a statement setting forth the time and place of the meeting and the persons present.

(c) The Board shall make a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(d) The National Science Board Office shall maintain the General Counsel's certificate, the presiding officer's statement, and the transcript or recording of the meeting for at least two years after the meeting and at least one year after the Board completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 614.4 Opening of transcript or recording.

(a) Except as otherwise provided in this section, the transcript or electronic recording of every portion of every meeting closed to the public will promptly be made available on request to any member of the public in an easily accessible place.

(b) Informal requests to inspect or copy the transcript or electronic recording of a closed session may be made to the staff of the National Science Board and will be handled informally and expeditiously. Written requests to inspect or copy such a transcript or recording that cite the Freedom of Information Act or the Sunshine Act will be treated as formal requests made under the Freedom of Information Act. They will be handled under the Foundation's Freedom of Information procedures described in 45 CFR Part 612. The exemptions of these Sunshine Act regulations, 45 CFR 614.2, will govern, however, in determining what portions of the transcript or recording may be withheld.

(c) A request to inspect or copy a transcript or electronic recording should specify the date of the meeting and the agenda item or items to which the request pertains. It should contain a promise to pay the costs of any duplication requested.

(d) No search or transcription fees will be charged. Duplication fees may be charged as provided in 45 CFR 612.6.

[42 FR 55619, Oct. 18, 1977]

§ 614.5 Public announcement.

(a) Except as provided in paragraphs (c) and (d) of this section, the National Science Board will make a public announcement of each Board meeting at least one week before the meeting takes place. The announcement will cover:

(1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and telephone number of the official designated to respond to requests for information on the meeting.

(b) Each such announcement will be promptly posted on public notice boards at the National Science Foundation and made available to journals of general scientific interest. Immediately following the issuance of such an announcement, it will be submitted for publication in the FEDERAL REGISTER.

(c) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the Board by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) an announcement is made at the earliest practicable time.

(d) All or any portion of the announcement of any meeting may be omitted if the Board by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 614.2.

§ 614.6 Meeting changes.

(a) The time or place of a meeting of the National Science Board that has been publicly announced as provided in § 614.5 may subsequently be changed, but any such change will be publicly announced at the earliest practicable time.

(b) The subject matter of any portion of any meeting of the Board that has been publicly announced as provided in § 614.5 or the determination whether any portion of any meeting so publicly announced will be open or closed may subsequently be changed, but only when:

(1) The Board determines by record vote that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member on the change at the earliest practicable time.

§ 614.7 Record vote.

(a) For purposes of this part a vote of the National Science Board is a "record vote" if: (1) It carries by a majority of all those holding office as Board Members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each Member present and voting is recorded.

(b) Within one day of any such record vote or any attempted record vote that fails to achieve the necessary majority under paragraph (a)(1) of this section, the Board Office will make publicly available a written record showing the vote of each Member on the question.

(c) Within one day of any record vote under which any portion or portions of a Board meeting are to be closed to the public, the Board Office will make available a full written explanation of the Board's action and a list of all persons expected to attend the meeting, showing their affiliations.

§ 614.8 Application to Board Executive Committee.

All the provisions of this part applicable to the National Science Board shall apply equally to the Executive Committee of the Board whenever the Executive Committee is meeting pursuant to its authority to act on behalf of the Board.

PART 617—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM NSF

Sec.

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617.2 Definitions.
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617.14 Remedial action by recipients.
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APPENDIX I TO 45 CFR PART 617—LIST OF AGE DISTINCTIONS PROVIDED IN FEDERAL STATUTES OR REGULATIONS AFFECTING FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY NSF

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.;* 45 CFR Part 90.

SOURCE: 49 FR 49625, Dec. 21, 1984, unless otherwise noted.

§ 617.1 Purpose.

This part prescribes NSF's policies and procedures under the Age Discrimination Act of 1975 and the Department of Health and Human Services government-wide age discrimination regulations at 45 CFR Part 90. The Act and Part 90 prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and Part 90 permit federally assisted programs and activities and recipients of Federal funds to continue to use age distinctions and factors other than age which meet the requirements of the Act and Part 90.

§ 617.2 Definitions.

The following terms used in this part are defined in Part 90:

Act
Action

Age
Age distinction
Age-related term
Agency
Federal financial assistance
Recipient (including subrecipients)
United States

§ 617.3 Standards.

Standards for determining whether an age distinction or age-related term is prohibited are set out in Part 90 of this Title 45. See also Appendix I to this part.

§ 617.4 General duties of recipients.

Each recipient of Federal financial assistance from NSF shall comply with the Act, Part 90, and this part. Each NSF award of Federal financial assistance shall contain the following provision:

COMPLIANCE WITH AGE DISCRIMINATION ACT

The recipient agrees to comply with the Age Discrimination Act of 1975 as implemented by the Department of Health and Human Services regulations at 45 CFR Part 90 and the regulations of the Foundation at 45 CFR Part 617. In the event the recipient passes on NSF financial assistance to subrecipients, this provision shall apply to the subrecipients, and the instrument under which the Federal financial assistance is passed to the subrecipient shall contain a provision identical to this provision.

§ 617.5 Self-evaluation.

(a) Each recipient (including subrecipients) employing the equivalent of fifteen or more full-time employees shall complete a written self-evaluation of its compliance under this part within 18 months of the effective date of these regulations, unless a similar evaluation has been completed for another agency.

(b) In its self-evaluation, each recipient shall identify all age distinctions it uses and justify each age distinction it imposes on the program or activity receiving Federal financial assistance from NSF.

(c) Each recipient shall take corrective action whenever a self-evaluation indicates a violation of the Act.

(d) Each recipient shall make the self-evaluation available on request to NSF and the public for three years after its completion.

§ 617.6 Information requirements.

Each recipient shall:

(a) Make available upon request to NSF information necessary to determine whether the recipient is complying with the Act.

(b) Permit reasonable access by NSF or its designee to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is complying with the Act.

§ 617.7 Compliance reviews.

(a) NSF may conduct compliance reviews of recipients that will permit it to investigate and correct violations of the Act. NSF may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of the Act has occurred.

(b) If a compliance review indicates a violation of the Act, NSF will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, NSF may arrange for enforcement as described in § 617.12.

§ 617.8 Pre-award reviews.

NSF reserves the right to conduct pre-award reviews of applicants for Federal financial assistance from NSF in cases where the NSF has substantial reason to believe that a potential recipient who is not then a recipient of other NSF financial assistance under the same program or activities may engage in practices under that program or activity that would violate the Act. However, the results of any such review shall not constitute a basis for NSF refusal to grant financial assistance to the applicant under that program or activity unless the procedural requirements of the Act (42 U.S.C. 6104) and §§ 617.12 and 617.13 of this part have been followed.

§ 617.9 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NSF, alleging discrimination prohibited by the Act. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NSF may extend this time limit.

(b) NSF will accept as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant. If an insufficient complaint is amended within 10 working days after notice by NSF to the complainant of the deficiency, NSF will consider the amended complaint as filed on the date the original insufficient complaint was filed for purposes of determining if it was timely filed. However, all other time requirements established by the Act and this part shall run from the date the amended complaint was filed.

(c) On receipt of any complaint NSF shall promptly send written acknowledgement to the complainant, and a copy of the complaint to the recipient. In addition, NSF shall send either copies of this part or other pertinent information describing the rights and obligations of the parties.

(d) NSF will return to the complainant any complaint outside the coverage of this part, and will state why it is outside the coverage of this part.

§ 617.10 Mediation.

(a) NSF will refer to the Federal Mediation and Conciliation Service all complaints that fall within the jurisdiction of this part and contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or for a mediator to make an informed judgement that an agreement is not possible. NSF will take no further administrative action on any complaint if the complainant refuses to participate in the mediation process.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NSF. NSF shall take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement, in which case the other party may request that the complaint be reopened.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the Federal Mediation and Conciliation Service.

(e) NSF will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time NSF receives a sufficient complaint; *or*

(2) Before the end of the 60 day period, an agreement is reached; *or*

(3) Before the end of the 60 day period, the mediator determines that an agreement cannot be reached.

(f) The mediator shall return unresolved complaints to NSF.

§ 617.11 Investigation.

(a) *Informal investigation.* (1) NSF will investigate complaints that are unresolved after mediation or are reopened because of violation of a mediation agreement.

(2) As part of the initial investigation, NSF will use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the facts, and, if possible, will settle the complaint on terms that are agreeable to the parties. NSF may seek the assistance of any involved State program agency.

(3) NSF will put any agreement in writing and have it signed by the parties and an authorized official of NSF.

(4) A settlement shall not affect other enforcement efforts of NSF, including compliance reviews, or individual complaints that involve the recipient.

(5) A settlement is not a finding of discrimination against the recipient.

(b) *Formal investigation.* If NSF cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of the Act, NSF will try to obtain voluntary compliance. If NSF cannot obtain voluntary compliance, it will begin enforcement as described in § 617.12. If the investigation does not indicate a violation of the Act, NSF will issue a written determination in favor of the recipient.

§ 617.12 Compliance procedure.

(a) NSF may enforce this part by either termination of a recipient's financial asistance from NSF under the program or activity involved where the recipient has violated the Act or this part or refusal to grant further financial assistance under the program or activity involved where the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases settled in the mediation process or before a hearing will not involve termination of a recipient's Federal financial assistance from NSF.

(b) NSF may also enforce this part by any other means authorized by law, including but not limited to:

(1) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations by this part.

(2) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or this part.

(c) NSF will limit any termination or refusal to grant further financial assistance to the particular recipient and the particular program found to be in violation of the Act. NSF will not base any part of a termination or refusal on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance for NSF.

(d) NSF will not begin any hearing under paragraph (a) until the Director has advised the recipient of its failure to comply with this part and has determined that voluntary compliance cannot be obtained.

(e) NSF will not terminate or refuse to grant Federal financial assistance until thirty days have elapsed after the Director has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Director will file a report whenever any action is taken under paragraph (f) of this section.

(f) *Alternate Funds Disbursal Procedures.* (1) When NSF withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or State or political subdivision of the State.

(2) The Director will require any alternate recipient to demonstrate:

(i) The ability to comply with these regulations; and

(ii) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 617.13 Hearings, decisions, post-termination proceedings.

Procedures prescribed in 45 CFR 611.9 and 611.10 for NSF enforcement of Title VI of the Civil Rights Act of 1964 shall apply also for NSF enforcement of this part. At the conclusion of any action taken under § 617.12, NSF, shall remind both parties of the right to judicial review established by 42 U.S.C. 6105.

§ 617.14 Remedial action by recipients.

Where the Director finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action the Director may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, the Director may require both recipients to take remedial action.

§ 617.15 Exhaustion of administrative remedies.

(a) A complainant may file a civil action after exhausting administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed a sufficient complaint and NSF has made no finding with regard to the complaint; or

(2) NSF issues any finding in favor of the recipient.

(b) If NSF fails to make a finding within 180 days or issues a finding in favor of the recipient, NSF will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief under 42 U.S.C. 6104; and

(3) Inform the complainant that under 42 U.S.C. 6104:

(i) The complainant may bring a civil action only in a United States District court for the district in which the recipient is located or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) Before commencing the action the complainant shall give 30 days notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) The notice must state the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 617.16 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against a person who:

(a) Attempts to assert a right protected by the Act, or

(b) Cooperates in any mediation, investigation, hearing or other part of NSF's investigation, conciliation, and enforcement process.

Appendix I to 45 CFR Part 617—List of Age Distinctions Provided in Federal Statutes or Regulations Affecting Federal Financial Assistance Administered by NSF

I. Section 6 of Pub. L. 94-86, 42 U.S.C. 1881a:

This statute authorizes the Foundation to establish the Alan T. Waterman Award to recognize and encourage the work of "younger" scientists. Under NSF procedures awards have been limited to persons 35 years of age or under.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

SOURCE: 53 FR 19201 and 19204, May 26, 1988, unless otherwise noted.

EDITORIAL NOTE:

(1) For nomenclature change to Part 620, see 53 FR 19201, May 26, 1988.

(2) For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474, September 6, 1988.

Subpart A—General

§ 620.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 620.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 620.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) [Reserved]

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *NSF.* National Science Foundation.

[53 FR 19201 and 19204, May 26, 1988]

§ 620.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 620.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 620.110(a). Sections 620.325, "Scope of debarment," and 620.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 620.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 620.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 620.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 620.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 620.205 Ineligible persons.

Persons who are ineligible, as defined in § 620.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 620.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 620.315 are excluded in accordance with the terms of their settlements. NSF shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 620.215 Exception provision.

NSF may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 620.200 of this rule. However, in accordance with the President's stated intention in the Executive order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 620.505(a).

§ 620.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 620.215.

§ 620.225 Failure to adhere to restrictions.

Except as permitted under § 620.215 or § 620.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 620.300 General.

The debarring official may debar a person for any of the causes in § 620.305, using procedures established in §§ 620.310 through 620.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 620.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 620.300 through 620.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 620.215 or § 620.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 620.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in 620.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

§ 620.310 Procedures.

NSF shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 620.311 through 620.314.

§ 620.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 620.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 620.305 for proposing debarment;

(d) Of the provisions of § 620.311 through § 620.314, and any other NSF procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 620.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 620.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 620.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 620.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, NSF may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

620.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* 620.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 620.311 through 620.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

§ 620.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 620.311 through 620.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, direc-

tor, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 620.400 General.

(a) The suspending official may suspend a person for any of the causes in § 620.405 using procedures established in §§ 620.410 through 620.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 620.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 620.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 620.400 through 620.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 620.305(a); or

(2) That a cause for debarment under § 620.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 620.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* NSF shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§ 620.411 through 620.413.

§ 620.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 620.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 620.411 through 620.413 and any other NSF procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 620.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 620.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 620.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 620.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 620.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 620.325), except that the procedures of §§ 620.410 through 620.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, NSF and Participants

§ 620.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 620.505 NSF responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which NSF has granted exceptions under § 620.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 620.500(b) and of the exceptions granted under § 620.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 620.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not

debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to NSF if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 54 FR 4964, Jan. 31, 1989, unless otherwise noted.

§ 620.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§ 620.605 Definitions.

(a) Except as amended in this section, the definitions of 620.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§ 620.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 620.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under 620.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§ 620.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 620.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 620.320(a)(2) of this part).

§ 620.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 620.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matter—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 620—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

PART 630—FELLOWSHIP REVIEW PANEL

Sec.

630.1 Purpose.
630.2 Definitions.
630.3 Fellowship Review Panel; Fellowship Review Board; in general.
630.4 Procedural safeguards.
630.5 Hearing before Fellowship Review Board or a Hearing Officer.
630.6 Preliminary decision; initial decision; final action.
630.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.

AUTHORITY: Sec. 11(a), 64 Stat. 153; 42 U.S.C. 1870.

SOURCE: 29 FR 14540, Oct. 23, 1964, unless otherwise noted.

§ 630.1 Purpose.

This part established a Fellowship Review Panel, from which Fellowship Review Boards will be selected, for the purpose of providing hearings where an opportunity for such hearing is provided for in applicable procedures of the Foundation, in cases where the Director has found substantial reason for a belief that a fellowship award should be denied or discontinued, on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of, the award.

§ 630.2 Definitions.

(a) "Fellowship Review Panel" (also referred to as "Panel") means a panel of from nine to twelve members selected by the Director, with the approval of the National Science Board, for such terms as may be designated by him, which shall include at least four representatives of the legal discipline and at least four representatives of the field of higher education. At least eight members of the Panel shall be selected from sources outside the Foundation.

(b) "Panel Chairman" means one of the panel members designated by the Director, with the approval of the National Science Board, to serve as Chairman of the Panel for such time as shall be indicated in the designation.

(c) "Fellowship Review Board" means not less than three members of the Panel designated by the Panel Chairman for the consideration of one or more cases submitted by the Director. At least two Fellowship Review Board members shall be persons other than employees of the Foundation, and the Fellowship Review Board shall include at least one representative of the legal discipline and one from the field of higher education. In no event shall anyone who participated in any previous consideration of a case be eligible to serve on a board in connection with its consideration of that case. The Panel Chairman may designate himself as one of the members of a Fellowship Review Board or as the Chairman thereof.

(d) "Fellowship Review Board Chairman" means a member of a Fellowship Review Board who has been designated as Chairman of such Board by the Panel Chairman.

(e) "Foundation" means the National Science Foundation.

(f) "Submission" means a referral (of an individual's request for a hearing) by the Director pursuant to § 610.5 of this chapter.

(g) "Preliminary decision" means the recommended decision, including findings of fact and conclusions reached in the light of the applicable criteria, prepared by a Hearing Officer and submitted to the Fellowship Review Board.

(h) "Initial decision" means the recommended decision of the Fellowship Review Board, which shall include (1) findings of fact and conclusion reached in the light of the applicable criteria and when applicable, (2) the reasons for any changes or modifications made by the Fellowship Review Board in a preliminary decision.

(i) "Director" means the Director of the National Science Foundation.

(j) "Applicable criteria" means those set forth in § 610.4 of this chapter, or in manual or other issuances of the Foundation pertaining to denial or discontinuance of fellowship or scholarship awards on grounds involving moral character or loyalty.

§ 630.3 Fellowship Review Panel; Fellowship Review Board; in general.

Upon receipt of a submission from the Director, the Chairman of the Fellowship Review Panel shall refer the case to a Fellowship Review Board, constituted as provided in § 630.2(c), for the purpose of recommending to the Director and the National Science Board, on the basis of a preponderance of the evidence, after affording to the individual concerned an opportunity for a fair hearing, whether the fellowship or scholarship award should be denied or discontinued by the Foundation on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of the award. The Fellowship Review Board's recommendation shall be embodied in an initial decision in accordance with § 630.2(h).

§ 630.4 Procedural safeguards.

The Fellowship Review Board shall take appropriate steps to afford the individual concerned an opportunity for a fair hearing, which shall include provisions designed to assure to such individual the following:

(a) Sufficient notice of the issues to be considered;

(b) An opportunity to be represented by counsel;

(c) Disclosure of as much of all matters of an evidentiary nature as may be permitted within the framework of applicable laws, regulations, and other requirements (e.g., those pertaining to FBI reports);

(d) An opportunity to appear in person (and to present witnesses in his behalf) or, at the option of the individual concerned, to submit his case in whole or in part in writing (e.g., through interrogatories, affidavits, exhibits, etc.);

(e) An opportunity to cross-examine persons either orally or through written interrogatories, to the extent provided by Executive Order 10865 of February 20, 1960 (relating to safeguarding of classified information within industry);

(f) An option to the individual concerned to have the hearing open or closed to the public;

(g) A determination of the place of the hearing which takes into consideration the convenience of the individual concerned and any witnesses who might be testifying at the hearing.

§ 630.5 Hearing before Fellowship Review Board or a Hearing Officer.

The hearing may be conducted, as determined by the Chairman of the Fellowship Review Board, before the full Fellowship Review Board as the hearing body, or before a Hearing Officer. The Hearing Officer may be (a) one of the members of the Fellowship Review Board or (b) a nonmember who is qualified as a Hearing Officer under the Administrative Procedure Act.

§ 630.6 Preliminary decision; initial decision; final action.

When the hearing is conducted by the Fellowship Review Board itself, it shall prepare an initial decision for submission to the Director. When the hearing is conducted before a Hearing Officer, the Hearing Officer shall prepare a preliminary decision for submission to the Fellowship Review Board. The preliminary decision shall be reviewed by the Fellowship Review Board and shall become the initial decision of the Fellowship Review Board unless, and to the extent that, it is changed or modified by the Fellowship Review Board. The initial decision of the Fellowship Review Board shall be transmitted to the Director, who shall in turn transmit it to the National Science Board, which shall then consider it and take such final action thereon as it shall deem to be appropriate.

§ 630.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.

Copies of the preliminary decision, if any, and of the initial decision shall be mailed promptly by the Hearing Officer or the Fellowship Review Board, as the case may be, to the individual, or his counsel, with a notice affording him an opportunity to submit written comments thereon, within a specified reasonable time, to the Fellowship Review Board in the case of a preliminary decision, and to the Director in the case of an initial decision.

PART 640—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
640.1 Purpose.
640.2 Committee on environmental matters.
640.3 Actions requiring an environmental assessment and categorical exclusions.
640.4 Responsibilities and procedures for preparation of an environmental assessment.
640.5 Responsibilities and procedures for preparation of an environmental impact statement.

AUTHORITY: NEPA; the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514, "Protection and Enhancement of Environmental Quality" (March 5, 1970, as amended by E.O. 11991, May 24, 1977); and CEQ regulations at 40 CFR Parts 1500 through 1508.

Source: 45 FR 40, Jan. 2, 1980, unless otherwise noted.

§ 640.1 Purpose.

The purpose of this regulation is to adopt NSF procedures to supplement regulations at 40 CFR Parts 1500 through 1508 (hereafter referred to as "CEQ regulations").

§ 640.2 Committee on environmental matters.

(a) There is established an NSF Committee on Environmental Matters (hereafter referred to as the Committee) to consist of one representative from each directorate, the Office of General Counsel, the Office of Legislative and Public Affairs, and the Office of the Comptroller. The Assistant director for Astronomical, Atmospheric, Earth, and Ocean Sciences, or his or her designee, shall serve as Chairman. At the discretion of the Chairman and with the concurrence of the Committee, additional members may be appointed.

(b) All incoming correspondence from CEQ and other agencies concerning matters related to NEPA, including draft and final environmental impact statements, shall be brought to the attention of the Chairman. The Chairman will prepare or, at his or her discretion, coordinate replies to such correspondence.

(c) The Committee shall meet regularly to discuss NSF policies and practices regarding NEPA, and make recommendations on the need for or adequacy of environmental impact assessments or statements.

(d) With respect to actions of NSF, the Committee will:

(1) Maintain a list of actions for which environmental impact statements are being prepared.

(2) Revise this list at regular intervals, based on input from the directorates, and send revisions to CEQ.

(3) Make the list available for public inspection on request.

(4) Maintain a list of environmental impact assessments.

(5) Maintain a file of draft and final environmental impact statements.

(e) The Committee and/or the Chairman will perform such additional functions as are set forth elsewhere in this part and in other NSF issuances.

[45 FR 40, Jan. 2, 1980, as amended at 49 FR 37596, Sept. 25, 1984]

§ 640.3 Actions requiring an environmental assessment and categorical exclusions.

(a) The types of actions to be classified as "major Federal actions" subject to NEPA procedures are discussed generally in the CEQ regulations. Paragraph (b) of this section describes various classes of NSF actions that normally require the preparation of an environmental assessment or an EIS, and those classes that are categorically excluded. (Categorical exclusion is defined at 40 CFR 1508.4.) The word "normally" is stressed; there may be individual cases in which specific factors require contrary action. NSF directorates and offices are responsible for identifying situations in which an environmental assessment or an EIS should be prepared even if not normally required by paragraph (b) of this paragraph.

(b) Most NSF awards support individual scientific research projects and are not "major Federal actions significantly affecting the quality of the human environment" except in the sense that the long term effect of the accumulation of human knowledge is likely to affect the quality of the human environment. However, such long term effects are basically speculative and unknowable in advance; thus they normally do not provide a sufficient basis for classifying research as subject to NEPA (See 40 CFR 1508.8) and are categorically excluded from an environmental assessment.

Nevertheless, in some cases the actual procedures used in carrying out the research may have potential environmental effects, particularly where the project requires construction of facilities or major disturbance of the local environment brought about by blasting, drilling, excavating, or other means. Accordingly, except as provided in paragraph (c) of this section, the following types of activities require at least an environmental assessment:

(1) Cases where developmental efforts are supported, if the project supports the transition of a particular technology from the development stage to large-scale commercial utilization.

(2) Any project supporting construction, other than interior remodelling.

(3) Cases where field work affecting the natural environment will be conducted.

(4) Any project that will involve drilling of the earth, excavation, explosives, weather modification, or other techniques that may alter a local environment.

(5) Any project that provides for the testing and release of biological-control agents for purposes of ecosystem manipulation and assessment of short- and long-term effects of major ecosystem perturbation.

(c) Directorates having divisions or programs with a substantial number of projects that fall within categories (3), (4), and (5) in (b) of this section, are authorized to issue supplemental guidelines to Division Directors and Program Officers establishing subcategories of research methodologies or techniques for which environmental assessments need not be prepared. For example, if a program regularly supports research that involves noninvasive techniques or nonharmful invasive techniques (such as taking water or soil samples, or collecting non-protected species of flora and fauna) the directorate may determine that field projects otherwise coming under paragraph (b)(3) of this section which involve only the use of such techniques do not require an environmental assessment. However, any such guidelines must be submitted to the Chairman for approval.

(d) In some cases within the categories listed in paragraph (b) of this section, it will be evident at the outset or after the assessment process is begun that an EIS should be prepared. In such cases an assessment need not be completed, but the process of preparing an EIS (See § 640.5, of this part) should be started.

§ 640.4 Responsibilities and procedures for preparation of an environmental assessment.

(a) Program Officers, as the first point of decision in the review process, shall determine into which category incoming proposals fall, according to the criteria set forth in § 640.3 of this part. Nothwithstanding this responsibility of the Program Officer, the appropriate Division Director, Assistant Director, and other reviewing policy officials must assure that adequate analysis is being made.

(b) Where appropriate, programs, divisions, or directorates will advise prospective applicants in program announcements, requests for proposals, and other NSF-prepared brochures of the requirement to furnish information regarding any environmental impact that the applicant's proposed study may have.

(c) Should an environmental assessment be required, the directorate supporting the activity shall be responsible for its preparation. The grant or contract applicant may be asked to submit additional information in order that a reasonable and accurate assessment may be made. Though no specific format for an environmental assessment is prescribed, it shall be a separate document suitable for public review and shall serve the purpose described in 40 CFR 1508.9, which is quoted in full as follows:

> *Section 1508.9 Environmental Assessment*
>
> "Environmental Assessment":
>
> (a) Means a concise public document for which a Federal agency is responsible that serves to:
>
> (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
>
> (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.
>
> (3) Facilitate preparation of a statement when one is necessary.
>
> (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(d) A copy of the assessment or drafts shall accompany the appropriate proposal throughout the NSF internal review and approval process. At the option of the directorate preparing the assessment, a draft may be submitted to the Committee for its review and comments. Prior to an award decision, one copy of all completed assessments shall be sent to the Chairman for review and updating of the Committee listing of assessments.

(e) If, on the basis of an environmental assessment, it is determined that an EIS is not required, a Finding of No Significant Impact (FNSI) as described in 40 CFR 1508.13 will be prepared. The FNSI shall include the environmental assessment or a summary of it and be available to the public from the Committee. If the proposed action is one that normally requires an EIS, is closely similar to an action normally requiring an EIS, or is without precedent, the FNSI shall be made available for a 30 day public review period before any action is taken.

§ 640.5 Responsibilities and procedures for preparation of an environmental impact statement.

(a) If initially or after an environmental assessment has been completed, it is determined that an environmental impact statement should be prepared, it and other related documentation will be prepared by the directorate responsible for the action in accordance with section 102(2)(c) of the Act, this part, and the CEQ regulations. The responsible directorate will be in close communication with the grant or contract applicant and may have to rely extensively on his or her input in preparing the EIS. However, once a document is prepared it shall be submitted to the Chairman who, after such review by the Committee as is deemed necessary by the Chairman, shall transmit the document as required by CEQ regulations and this part. If the Chairman considers a document unsatisfactory, he or she shall return it to the responsible directorate for revision prior to an award decision.

Specifically, the following steps, as discussed in the CEQ regulations, will be followed in preparing an EIS:

(1) A notice of intent to prepare a draft EIS will be published as described in 40 CFR 1501.7.

(2) Scoping, as described in 40 CFR 1501.7, will be conducted.

(3) The format and contents of the draft and final EIS shall be as discussed in 40 CFR Part 1502.

(4) Comments on the draft EIS shall be invited as set forth in 40 CFR 1503.1. The minimum period to be afforded for comments on a draft EIS shall be 45 days, unless a lesser period is necessary to comply with other specific statutory requirements or in case of emergency circumstances, as described in 40 CFR 1506.11.

(5) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(6) The responsible directorate shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(7) The Act requires that the decisionmaking involved "utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts." If such disciplines are not present on the NSF staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(8) A copy of the draft EIS or the final EIS (or a summary, if the size of the EIS does not make this practical) shall be included in and accompany the appropriate proposal throughout the NSF internal review and approval process.

(b)(1) 40 CFR 1506.1 describes the types of actions that should not be taken during the NEPA process. Such actions shall be avoided by NSF personnel during the process of preparation of an EIS and for a period of thirty days after the final EIS is filed with EPA, unless such actions are necessary to comply with other specific statutory requirements.

(2) 40 CFR 1506.10 also places certain limitations on the timing of agency decisions on taking "major Federal actions". In some cases the

actual "decision point" may be more clear-cut than others. If the "action" that necessitated the preparation of an EIS is one that would be carried out under grant, contract, or cooperative agreement, then the award shall not be made before the times set forth in 40 CFR 1506.10, unless such action is necessary to comply with other specific statutory requirements, or as exceptions are needed as provided in 40 CFR 1506.10, 1506.11, or 1507.3. However, an award for preliminary planning proposals may be made before such times if it is so structured as to require further NSF approvals for funding the actual actions that might adversely affect the quality of the human environment. In such cases, the subsequent approvals for funding these actions will be considered the "decision". This is consistent with the requirement that environmental considerations undergo concurrent review with all other project planning considerations.

(c) In appropriate cases, if the action involves other agencies, the Chairman may agree to designate another agency as "lead agency" and to cooperate as discussed in 40 CFR 1501.5 and 1501.6. In such cases, the Chairman has authority to alter the procedures described in (a) to the extent they are inconsistent with functions assigned to NSF under the "cooperating agency" arrangements.

(d) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national policy considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigation, will be prepared. This record of decision will be prepared at the time the decision is made, or if appropriate, when the agency makes its recommendation for action to Congress. (See 40 CFR 1505.2.)

PART 650—PATENTS

Sec.
650.1 Scope of part.
650.2 National Science Foundation patent policy.
650.3 Source of authority.
650.4 Standard patent rights clause.
650.5 Special patent provisions.
650.6 Awards not primarily for research.
650.7 Awards affected by international agreements.
650.8 Requests for greater rights.
650.9 Retention of rights by inventor.
650.10 Unwanted inventions.
650.11 Inventions also supported by another Federal Agency.
650.12 Utilization reports.
650.13 Waivers.
650.14 Exercise of march-in rights.
650.15 Request for conveyance of title to NSF.
650.16 Appeals.
650.17 Background rights.
650.18 Subcontracts.
650.19 Retroactive application.
650.20 Delegation of authority.
APPENDIX A—OPTIONAL FORMAT FOR CONFIRMATORY LICENSE

AUTHORITY: 35 U.S.C. 200 *et seq.*, commonly called the Bayh-Dole Act, as implemented by Office of Management and Budget Circular A-124; secs. 11(e) and 12(a) of the National Science Foundation Act, as amended (42 U.S.C. 1870(e) and 1871(a)); and the Presidential Memorandum entitled "Government Patent Policy", issued Feb. 18, 1983.

SOURCE: 48 FR 19860, May 2, 1983, unless otherwise noted.

§ 650.1 Scope of part.

This part contains the policies, procedures, and clauses that govern allocation of rights to inventions made in performance of NSF-assisted research. It applies to all funding agreements entered into by the Foundation after September 30, 1984, that relate to performance of scientific or engineering research. As stated in the NSF Acquisition Regulation (Chapter 25 of Title 48 of the Code of Federal Regulations), the provisions of this part apply to contracts as well as to grants and cooperative agreements.

[49 FR 37596, Sept. 25, 1984]

§ 650.2 National Science Foundation patent policy.

As authorized by the National Science Board at its 230th meeting, October 15-16, 1981, the Director of the National Science Foundation adopted the following statement of NSF patent policy.

(a) As required by the Bayh-Dole Act and the Presidential Memorandum entitled "Government Patent Policy" issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Office of Management and Budget in all its funding agreements for the performance of experimental, developmental, or research work, including contracts for the operation of Government-owned research facilities, *unless* the Foundation determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.

(c) The Foundation will claim no rights to inventions in funding agreements made primarily for the support of education or training, such as fellowships and traineeships. A disclaimer of interest in inventions will be included in such awards.

(d) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee shows that it would be harmed by that action.

(e) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

(f) The Foundation will waive the restrictions imposed by the Bayh-Dole Act on the assignment or exclusive licensing of NSF-supported inventions by a nonprofit organization when that appears to serve the policy and objective of the Act. For identified inventions, the Foundation will waive the restrictions if the nonprofit organization obtains from the prospective assignee or licensee a firm commitment to develop and commercialize the invention. In any industry-university joint research award, the Foundation will waive the restrictions at the time of award if the nonprofit organization shows that they are unfair considering the industrial participant's contribution or that the project will not be undertaken unless they are waived.

(g) In funding agreements not controlled by the Bayh-Dole Act, the Foundation will waive any of the rights or conditions normally reserved or imposed if the grantee or contractor demonstrates (i) that the interests of the United States and the general public will be better served thereby, or (ii) that it is making a substantial contribution of funds, facilities, or equipment to the work performed under the funding agreement.

(h) As far as practical, the Foundation will apply the intent of this policy to funding agreements entered into before the effective dates of the Bayh-Dole Act and the Presidential Memorandum.

§ 650.3 Source of authority.

(a) 35 U.S.C. 200 *et seq.*, commonly called the Bayh-Dole Act, took effect on July 1, 1981. That law controls the allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, during federally-supported experimentation, research, or development. Government-wide implementing regulations are contained in Office of Management and Budget Circular A-124, dated February 10, 1982.

(b) Section 11 (e) of the National Science Foundation Act of 1950, as amended, (42 U.S.C 1870(e)) provides:

> The Foundation shall have the authority * * * to do all things necessary to carry out the provisions of this Act, including, but without being limited thereto, the authority—
>
> * * *(e) to acquire by purchase, lease, loan, gift, or condemnation, and to hold and dispose of by grant, sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority granted by this Act.

(c) Section 12(a) of the NSF Act (42 U.S.C. 1871(a)) provides:

> Each contract or other arrangement executed pursuant to this Act which relates to scientific research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed * * *.

(d) The Presidential Memorandum entitled "Government Patent Policy" issued February 18, 1983, directs Federal agencies, to the extent permitted by law, to apply to all research performers the policies of the Bayh-Dole Act. Under the provisions of the National Science Foundation Act quoted above, the Foundation is permitted to apply the Bayh-Dole policies without restriction.

§ 650.4 Standard patent rights clause.

(a) The following Patent Rights clause will be used in every funding agreement awarded by the Foundation that relates to scientific or engineering research unless a special patent clause has been negotiated (see § 650.5).

PATENT RIGHTS (SEPTEMBER 1984)

a. Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(2) "Subject invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant.

(3) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small business firm" means a domestic small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

b. Allocation of Principal Rights

The grantee may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. If the award indicates it is subject to an identified international agreement or treaty, the Foundation also has the right to direct the grantee to convey to any foreign participant such patent rights to subject inventions as are required to comply with that agreement or treaty.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Grantee

(1) The grantee will disclose each subject invention to the National Science Foundation (NSF) within two months after the inventor discloses it in writing to grantee personnel responsible for the administration of patent matters. The disclosure to NSF shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NSF, the grantee will promptly notify NSF of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any such invention by notifying NSF within twelve months of disclosure to grantee personnel responsible for patent matters; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by NSF to a date that is no more than 60 days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale or public use. The grantee will file patent applications in additional countries within either ten months of the corresponding initial patent application, or six months from the date when permission is granted

by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to NSF, election, and filing may, at the discretion of NSF, be granted.

d. Conditions When the Government May Obtain Title

The grantee will convey to NSF, upon written request, title to any subject invention:

(1) If the grantee fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. NSF may only request title within sixty days after learning of the grantee's failure to disclose elect within the specified times.

(2) In those countries in which the grantee fails to file patent applications within the times specified in c. above; provided, however, that if the grantee has filed a patent application in a country after the times specified in c. above but prior to its receipt of the written request of NSF the grantee shall continue to retain title in that country.

(3) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Grantee

(1) The grantee will retain a nonexclusive, royalty-free, license throughout the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in c. above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a party and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of NSF except when transferred to the successor of that part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by NSF to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NSF to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NSF will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by NSF for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with applicable regulations in the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Grantee Action to Protect Government's Interest

(1) The grantee agrees to execute or to have executed and promptly deliver to NSF all instruments necessary to: (i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the grantee retains title, and (ii) convey title to NSF when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly lin writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by c. (1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The grantee will notify NSF of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States

patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the grant) awarded by the National Science Foundation. The Government has certain rights in this invention."

(5) The grantee or its representative will complete, execute, and forward to NSF a confirmation of a License to the United States Government within two months of filing any domestic or foreign patent application.

(6) The grantee or its representative will forward to NSF a copy of any United States patent covering a subject invention within two months after it is issued.

g. Subcontracts

(1) The grantee will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor will retain all rights provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the case of subcontracts, at any tier, when the prime award by the Foundation was a contract (but not a grant or cooperative agreement), NSF, subcontractor, and contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Foundation with respect to those matters covered by this clause.

h. Reporting on Utilization of Subject Inventions

The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as NSF may reasonably require. The grantee also agrees to provide additional reports in connection with any march-in proceedings undertaken by NSF in accordance with paragraph j. of this clause. To the extent data or information supplied under this section is considered by the grantee, its licensee or assignee to be privileged and confidential and is so marked, NSF agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

i. Preference for United States Industry

Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NSF upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantilly in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights

The grantee agrees that with respect to any subject invention in which it has acquired title, NSF has the right in accordance with procedures in OMB Circular A-124 and NSF regulations at 45 CFR 650.13 to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, NSF has the right to grant such a license itself if NSF determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph i. of this clause has not obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Grants With Nonprofit Organizations

If the grantee is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without

the approval of NSF, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the grantee);

(2) The grantee may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention, or

(ii) Eight years from the date of the exclusive license excepting the time before regulatory agencies necessary to obtain premarket clearance,

unless on a case-by-case basis NSF approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The grantee will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

l. Communications

All disclosures, elections, confirmations of the Government license, copies of patents, and other routine communications should be sent to the NSF Patent Paralegal, Office of the General Cousel, National Science Foundation, Washington, DC, 20550. Requests for waivers and other exceptional communications with the Foundation regarding this clause should be addressed to the NSF Intellectual Property Attorney, Office of the General Counsel, National Science Foundation, Washington, DC, 20550.

(b) When the above clause is used in a funding agreement other than a grant, "grant" and "grantee" may be replaced by "contract" and "contractor" or other appropriate terms.

(Approved by the Office of Management and Budget under control number 3145-0084)

[49 FR 37596, Sept. 25, 1984]

§ 650.5 Special patent provisions.

(a) At the request of the prospective awardee or on recommendation from NSF staff, the NSF Intellectual Property Attorney, with the concurrence of the cognizant Program Manager and Grants or Contracts Officer, many negotiate special patent provisions:

(1) When the NSF Intellectual Property Attorney determines that restriction or elimination of the right of a prospective awardee to retain title to any subject invention will better promote the policy and objectives of Chapter 38 of Title 35 of the United States Code or the National Science Foundation Act (The NSF Intellectual Property Attorney will prepare the report to the Comptroller General if required by Part 7.b. of OMB Circular A-124.);

(2) When a prospective awardee that is not a small business firm or domestic nonprofit organization shows that any of the rights or conditions normally reserved or imposed by the clause in § 650.4(a) should be waived because:

(i) The interests of the United States and the general public will be better served thereby as, for example, where the prospective awardee is uniquely or highly qualified but cannot or will not accept the standard Patent Rights clause; or

(ii) The prospective awardee is making a substantial contribution of funds, facilities, or equipment to the work performed under the award;

(3) When the research is to be performed outside the United States; or

(4) When other exceptional circumstances exist.

§ 650.6 Awards not primarily for research.

(a) Awards not primarily intended to support scientific or engineering research need contain no patent provision. Examples of such awards are travel and conference grants.

(b) NSF fellowships and traineeships are primarily intended to support education or training, not particular research, and the Foundation claims no rights to inventions made by fellows or trainees. The following provision will be included in each fellowship or traineeship program announcement and made part of the award:

INTELLECTUAL PROPERTY RIGHTS

The National Science Foundation claims no rights to any inventions or writings that might result from its fellowship or traineeship awards. However, fellows and trainees should be aware that the NSF, another Federal agency, or some private party may acquire such rights through other support for particular research. Also, fellows and trainees should note their obligation to include an Acknowledgement and Disclaimer in any publication.

§ 650.7 Awards affected by international agreements.

(a) Some NSF awards are made as part of international cooperative research programs. The agreements or treaties underlying many of these programs require an allocation of patent rights different from that provided by the Patent Rights clause in § 650.4(a). Therefore, as permitted by part 8.d. of OMB Circular A-124, paragraph b. of the standard Patent Rights clause in § 650.4(a) has been modified to provide that the Foundation may require the grantee to transfer to a foreign government or research performer such rights in any subject invention as are contemplated in the international agreement. The award instrument will identify the applicable agreement or treaty.

(b) After an invention is disclosed to the Patent Paralegal, the recipient of an award subject to an international agreement will be informed as to what rights, if any, it must transfer to foreign participants. Recipients may also ask the Program Manager to provide them with copies of the identified international agreements before or after accepting an award.

§ 650.8 Requests for greater rights.

A "deferred determination" clause was routinely included in NSF awards made on or before March 31, 1983, and may occasionally be used as a special patent rights clause under § 650.5. Recipients of that clause may request that they be allowed to retain the principal patent rights to their subject inventions after those inventions are disclosed to the NSF Patent Paralegal. Such a request should be made as soon as possible after the invention is disclosed and should state the requestor's intention and, to the extent known, plans to commercialize the invention. The NSF Intellectual Property Attorney, with the concurrence of the cognizant Program Manager and Grants or Contracts Officer, will normally allow the inventing organization to retain the principal patent rights, subject to the terms and conditions imposed by the Patent Rights clause of § 650.4(a), unless he or she determines that would be inconsistent with the policies of the National Science Foundation Act of 1950, as amended; the 1983 Presidential Memorandum on "Government Patent Policy"; or, if applicable, the Bayh-Dole Act.

§ 650.9 Retention of rights by inventor.

If an awardee elects not to retain rights to an invention, the inventor may request the NSF Intellectual Property Attorney for permission to retain principal patent rights. Such requests should be made as soon as possible after the awardee notifies the NSF Patent Paralegal that it does not want to patent the invention. Such requests will normally be granted unless the awardee shows that it would be harmed by that action. As required by part 11. of OMB Circular A-124, the inventor will be subject to the same conditions that the awardee would have been, except that the special restrictions imposed on nonprofit organizations will not apply to the inventor.

§ 650.10 Unwanted inventions.

(a) The Foundation will normally allow any patent rights not wanted by the awardee of inventor to be dedicated to the public through publication. Except as provided in paragraph (b) of this section, the NSF Patent Paralegal will acknowledge a negative election by encouraging the awardee and inventor to promptly publish all the research results.

(b) If the NSF Patent Paralegal or Program Manager believes that another Federal agency is interested in the relevant technology, the Patent Paralegal, after receiving the awardee's election not to patent and after ascertaining that the inventor also does not want to patent, may send a copy of the invention disclosure to that agency to give it an opportunity to review and patent the invention. Unless the agency expresses an interest in the invention within thirty days, the Patent Paralegal will acknowledge the awardee's negative election by encouraging prompt publication of all research results. If the agency does express an interest in patenting the invention, the Patent Paralegal, with the concurrence of the cognizant Program Manager and Grants or Contracts Officer, will transfer to it all rights to the invention.

§ 650.11 Inventions also supported by another Federal Agency.

Part 16.c. of OMB Circular A-124 provides that in the event that an invention is made under funding agreements of more than one agency, the agencies involved will, at the request of the grantee or contractor or on their own initiative, designate one agency to be responsible for the administration of the invention. Whenever the NSF Patent Paralegal finds that another Federal agency also supported an NSF subject invention, he or she will consult with the grantee or contractor and the other agency to determine if a single agency should be designated to administer the Government's rights in the invention. With the concurrence of the cognizant Program Manager and Grants or Contracts Officer, the Patent Paralegal may transfer to, or accept from, another Federal agency, all rights in a jointly-supported invention.

§ 650.12 Utilization reports.

Until the form for and frequency of the utilization reports required by paragraph h of the standard Patent Rights clause are established by the Lead Agency overseeing implementation of the Bayh-Dole Act (see part 10.a. of OMB Circular A-124), the Foundation will not normally request such reports. This section will be amended to describe the reporting requirements when they are established.

§ 650.13 Waivers.

(a) Requests for extension of time to disclose to the NSF Patent Paralegal, make an election to retain title to, or file a patent on a subject invention will be granted unless the NSF Intellectual Property Attorney determines that such an extension would either imperil the securing of valid patent protection or unacceptably restrict the publication of the results of the NSF-supported research.

(b) The restrictions on assignment and exclusive licensing by nonprofit organizations imposed by subparagraphs k(1) and k(2) of the Patent Rights clause in § 650.4(a) will be waived when that appears to serve the policy and objective of the Bayh-Dole Act. The NSF Intellectual Property Attorney may waive the restrictions either at the time of award or for an identified invention. Some circumstances under which the restrictions will normally be waived are described in section 6 of the NSF Patent Policy (§ 650.2).

(c) The preference for United States industry imposed by paragraph i of the clause in § 650.4(a) may be waived by the NSF Intellectual Property Attorney as provided in that paragraph.

(d) The NSF Intellectual Property Attorney may waive on behalf of the Foundation and the Government some or all of the rights normally reserved in a subject invention if the award under which the invention was made was not controlled by the Bayh-Dole Act and the inventing organization demonstrates that the NSF made a very limited contribution to the discovery or that the interests of the United States and the general public will be served thereby. If the award under which the invention was made was subject to the Federal Acquisition Regulations, the Intellectual Property Attorney will prepare an accompanying written statement, as required by 48 CFR 27.304-1(f)(2).

(e) Requests for waiver under this section should be addressed to the NSF Intellectual Property Attorney and should explain why waiver is justified under the stated criteria. The Intellectual Property Attorney will obtain the concurrence of the cognizant Program Manager and Grants or Contracts Officer before taking any action under this section. The requester will be given a written explanation of the reasons for denial of a request covered by this section.

[48 FR 19820, May 2, 1983, as amended at 49 FR 37598, Sept. 25, 1984]

§ 650.14 Exercise of march-in rights.

(a) The procedures established by this section supplement those prescribed by part 13. of OMB Circular A-124 and apply to all march-in rights held by the Foundation including those resulting from funding agreements not covered by the OMB Circular.

(b) Petitions requesting that the NSF exercise a march-in right should be addressed to the NSF Intellectual Property Attorney. Such petitions should:

(1) Identify the patent or patent application involved and the relevant fields of use of the invention;

(2) State the grounds for the proposed march-in;

(3) Supply evidence that one or more of the four conditions creating a march-in right (lack of practical application, unsatisfied health or safety needs, unmet requirements for public use, or failure to prefer United States industry) is present; and

(4) Explain what action by the Foundation is necessary to correct that condition.

(c) If evidence received from a petitioner or from the Foundation's administration of the Patent Rights clauses indicates that one or more of the four conditions creating a march-in right might exist, the NSF Intellectual Property Attorney will informally review the matter as provided in part 13.b. of OMB Circular A-124. If that informal review indicates that one or more of the four conditions creating a march-in right probably exists, the Intellectual Property Attorney will initiate a formal march-in proceeding by issuing a written notice to the patentholder. That notice will provide all the information required by part 13.c. of OMB Circular A-124. The patentholder may submit information and argument in opposition to the proposed march-in in person, in writing, or through a representative.

(d) If the NSF Intellectual Property Attorney determines that a genuine dispute over material facts exists, he or she will identify the disputed facts and notify the NSF General Counsel. The General Counsel will establish a cross-directorate fact-finding panel. The panel will establish its own fact-finding procedures, within the requirements of part 13.e. of OMB Circular A-124, based on the dimensions of the particular dispute. The Intellectual Property Attorney will serve as secretary to the panel, but will not take part in its deliberations. Written findings of facts will be submitted to the General Counsel, sent by certified mail to the patentholder, and made available to all other interested parties.

(e) The NSF General Counsel will determine whether and how the Foundation should exercise a march-in right as provided in part 13.g. of OMB Circular A-124.

§ 650.15 Request for conveyance of title to NSF.

(a) The procedures established by this section apply to the exercise of the Foundation's right under paragraph d. of the Patent Rights clause in § 650.4(a) to request conveyance of title to a subject invention if certain conditions exist.

(b) The NSF Intellectual Property Attorney may request the recipient of an NSF award to convey to the Foundation or a designee title in one or more countries to any invention to which the awardee has elected not to retain title. The Intellectual Property Attorney may also request immediate conveyance of title to a subject invention if the awardee fails (1) to submit a timely invention disclosure, (2) to make a timely election to retain patent rights, or (3) to file a timely patent application; but only if he or she determines that such action is required to preserve patent rights.

(c) The NSF Intellectual Property Attorney will informally review any apparent failure by an awardee to comply with the requirements of paragraph c. of the Patent Rights clause in

§ 650.4(a). The interested institution, the inventor, the patentholder, and any other interested party will be given an opportunity to explain why a particular invention was not disclosed, why an election was not made, or why a patent application was not filed. If the Intellectual Property Attorney determines that a genuine dispute over material facts exists, a cross-directorate fact-finding panel will be appointed by the General Counsel. The panel will establish its own fact-finding procedures, within the requirements of part 13.e. of OMB Circular A-124, based on the dimensions of the particular dispute. Written findings of facts will be submitted to the Intellectual Property Attorney, sent by certified mail to the patentholder, and made available to all other interested parties.

(d) The NSF Intellectual Property Attorney will determine whether the Foundation should request conveyance of title or if it should retain title obtained under § 650.15(b).

[48 FR 19860, May 2, 1983; 48 FR 44078, Sept. 27, 1983]

§ 650.16 Appeals.

(a) All actions by the NSF Intellectual Property Attorney under § 650.8 denying a request for greater rights, under § 650.13 denying a request for waiver, under § 650.14(d) denying the existence of a material dispute, under § 650.15(d) requesting conveyance of title, or under § 650.19 refusing retroactive application of the Bayh-Dole Act may be appealed to the Director of the Foundation by an affected party within thirty days. A request under § 650.15(b) to immediately convey title to the Foundation may be appealed to the General Counsel by the titleholder within five days.

(b) In reviewing the actions of the NSF Intellectual Property Attorney, the Director, or his or her designee, will consider both the factual and legal basis for the action or determination and its consistency with the policies and objectives of the Foundation and, if applicable, the Bayh-Dole Act (35 U.S.C. 200 to 206) and OMB Circular A-124.

[48 FR 19860, May 2, 1983; 48 FR 44078, Sept. 27, 1983]

§ 650.17 Background rights.

The Foundation will acquire rights to a research performer's pre-existing technology only in exceptional circumstances where, due to the nature of the research being supported, the Foundation requires greater control over resulting inventions. The NSF Intellectual Property Attorney, with the concurrence of the cognizant Program Manager and Grants or Contracts Officer, will negotiate the background rights provision. If the affected awardee is a small business firm or nonprofit organization, the provision will conform to the requirements of the Bayh-Dole Act (35 U.S.C. 202(f)) as implemented by part 15 of OMB Circular A-124.

§ 650.18 Subcontracts.

Awardees should normally use the Patent Rights clause in § 650.4(a) in all subcontracts. At the request of the awardee or on recommendation from NSF staff, the Intellectual Property Attorney, with the concurrence of the cognizant Program Manager and Grants or Contracts Officer, may direct the awardee to insert into subcontracts relating to scientific research a patent provision other than that contained in § 650.4(a) of this regulation. Special patent provisions may be negotiated for subcontracts under § 650.5.

§ 650.19 Retroactive application.

The provisions of § 650.8 apply to all inventions disclosed after the effective date of this regulation under funding agreements that contain a deferred determination clause, including those awarded before July 1, 1981, to small business firms and nonprofit organizations. At the request of the awardee, the Intellectual Property Attorney, with the concurrence of the cognizant Program Manager and Grants or Contracts Officer, may also apply those provisions to inventions disclosed under awards which contain special patent clauses or were covered by an Institutional Patent Agreement with the Foundation.

§ 650.20 Delegation of authority.

The General Counsel is responsible for implementing this regulation and is authorized to make any exceptions to or extensions of the NSF Patent Policy as may be required by particular circumstances. The General Counsel will designate persons to serve as the NSF Intellectual Property Attorney and Patent Paralegal. Those individuals are authorized to carry out the functions assigned them by this regulation.

APPENDIX A TO PART 650—OPTIONAL FORMAT FOR CONFIRMATORY LICENSE

The following format may be used for the confirmatory license to the Government required by subparagraph f(5) of the Patent Rights clause in § 650.4(a). The form given in 41 CFR 1-9.105(b) or any equivalent instrument may also be used.

License to the United States Government

This instrument confirms to the United States Government, as represented by the National Science Foundation, an irrevocable, nonexclusive, nontransferable, royalty-free license to practice or have practiced on its behalf throughout the world the following subject invention:

(invention title)
(inventor[s] name[s])
(patent application number and filing date)
(country, if other than United States)
(NSF Disclosure No.).

This subject invention was made with NSF support through:

(grant or contract number)
(grantee or contractor).

Principal rights to this subject invention have been left with the licensor.

Signed: ______
Name: ______
Title: ______
Date: ______

Accepted on behalf of the Government:

______

NSF Patent Paralegal
Date: ______

PART 660—INTERGOVERNMENTAL REVIEW OF THE NATIONAL SCIENCE FOUNDATION PROGRAMS AND ACTIVITIES

Sec.

660.1 What is the purpose of these regulations?
660.2 What definitions apply to these regulations?
660.3 What programs and activities of the Foundation are subject to these regulations?
660.4 [Reserved]
660.5 What is the Director's obligation with respect to Federal interagency coordination?
660.6 What procedures apply to the selection of programs and activities under these regulations?
660.7 How does the Director communicate with state and local officials concerning the Foundation's programs and activities?
660.8 How does the Director provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?
660.9 How does the Director receive and respond to comments?
660.10 How does the Director make efforts to accommodate intergovernmental concerns?
660.11 What are the Director's obligations in interstate situations?
660.12 [Reserved]
660.13 May the Director waive any provision of these regulations?

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended Apr. 8, 1983 (48 FR 15887); and sec. 401 of the Intergovernmental Cooperation Act of 1968 and as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29365, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

§ 660.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovermental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovermental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Foundation, and are not intended to create any right or benefit enforceable at law by a party against the Foundation or its officers.

§ 660.2 What definitions apply to these regulations?

"Foundation" means the National Science Foundation.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Director" means the Director of the National Science Foundation or an official or employee of the Foundation acting for the Director under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 660.3 What programs and activities of the Foundation are subject to these regulations?

The Director publishes in the FEDERAL REGISTER a list of the Foundation's programs and activities that are subject to these regulations.

§ 660.4 [Reserved]

§ 660.5 What is the Director's obligation with respect to Federal interagency coordination?

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Foundation regarding programs and activities covered under these regulations.

§ 660.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 660.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Director of the Foundation's programs and activities selected for that process.

(c) A state may notify the Director of changes in its selections at any time. For each change, the state shall submit to the Director an assurance that the state has consulted with elected local elected officials regarding the change. The Foundation may establish deadlines by which states are required to inform the Director of changes in their program selections.

(d) The Director uses a state's process as soon as feasible, depending on individual programs and activities, after the Director is notified of its selections.

§ 660.7 How does the Director communicate with state and local officials concerning the Foundation's programs and activities?

(a) For those programs and activities covered by a state process under § 660.6, the Director, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Foundation in its discretion deems appropriate.

§ 660.8 How does the Director provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Director gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Director to comment on proposed Federal financial assistance in covered programs (i.e., those referenced in § 660.3) in the form of continuation awards that are not peer reviewed; and

(2) At least 60 days from the date established by the Director to comment on proposed direct Federal development or Federal financial assistance in covered programs (i.e., those referenced § 660.3) other than continuation awards that are not peer reviewed.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Foundation have been delegated.

§ 660.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 660.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 660.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Foundation.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Foundation. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Foundation by the single point of contact, the Director follows the procedures of § 660.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 660.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Foundation by a commenting party.

§ 660.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Foundation through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) The Foundation will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 660.11 What are the Director's obligations in interstate situations?

(a) The Director is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Foundation's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Foundation's program or activity;

(4) Responding pursuant to § 660.10 of this part if the Director receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Foundation have been delegated.

(b) The Director uses the procedures in § 660.10 if a state process provides a state process recommendation to the Foundation through a single point of contact.

§ 660.12 [Reserved]

§ 660.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

PART 670—CONSERVATION OF ANTARCTIC ANIMALS AND PLANTS

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AUTHORITY: Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

SOURCE: 44 FR 32699, June 7, 1979, unless otherwise noted.

Subpart A—Introduction

§ 670.1 Purpose of regulations.

The purpose of these regulations is to conserve and protect the native mammals, native birds and native plants of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Pub. L. 95-541.

§ 670.2 Scope.

These regulations apply to:

(a) Taking any mammal or bird native to Antarctica,

(b) Collecting any plant native to Antarctica in a specially protected area,

(c) Entering any specially protected area or site of special scientific interest,

(d) Importing into or exporting from the United States any mammal or bird native to Antarctica or any plant collected in a specially protected area, and

(e) Introducing into Antarctica any non-indigenous plant or animal.

§ 670.3 Definitions.

In this part:

"Act" means the Antarctic Conservation Act of 1978, Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401 et. seq.)

"Agreed Measures" means the Agreed Measures for Conservation of Antarctic Fauna and Flora, as recommended for approval at the Third Antarctic Treaty Consultative Meeting, and as amended in accord with Article IX (1) of the Treaty.

"Antarctica" means the area south of 60 degrees south latitude.

"Collect" means to cut, sever, or move any native plant, or to attempt to engage in any such action.

"Director" means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

"Foreign person" means any individual who is a citizen or national of a foreign nation; any corporation, partnership, trust, association or other legal entity existing or organized under the laws of a foreign nation; any department, agency, or other instrumentality of any foreign nation and any office, employee, or agent of any such instrumentality.

"Management plan" means the restrictions applicable to activities in Sites of Special Scientific Interest.

"Native bird" means a member of any species of the class *Aves*, which is indigenous to Antarctica or occurs there through natural agencies of dispersal that is designated in Subpart D of this part. It includes any part, product, egg, or offspring of or the dead body or parts thereof excluding fossils.

"Native mammal" means a member of any species of the class Mammalia, except species regulated by the International Whaling Commission, which is indigenous to Antarctica or occurs there through natural agencies of dispersal that is designated in Subpart D of this part. It includes any part, product, egg, or offspirng of or the dead body or parts excluding fossils.

"Native plant" means any kind of vegetation at any stage of its life cycle indigenous to Antarctica or occurring there through natural agencies of dispersal, including seeds but excluding fossils, that is designated in Subpart F of this part.

"Site of Special Scientific Interest" means an area of unique value for scientific investigation designated in Subpart H of this part as needing protection from interference.

"Specially Protected Area" means an area of outstanding scientific or ecological interest designated in Subpart C of this part.

"Specially Protected Species" means any species of native mammal or native bird that is approved by the United States for special protection under the Agreed Measures and is designated in Subpart E of this part.

"Take" means to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag any native mammal or native bird, or to attempt to engage in such conduct.

"Treaty" means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959.

"United States" means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Terrritory of the Pacific Islands, including the Government of the Northern Mariana Islands.

"United States citizen" means any individual who is a citizen or national of the United States; any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; any department, agency, or other instrumentality of the Federal Government or of any State; and any officer, employee, or agent of any such entity or instrumentality.

Subpart B—Prohibited Acts, Exceptions

§ 670.4 Prohibited acts.

Unless a permit has been issued pursuant to Subpart C of this part or unless one of the exceptions stated in §§ 670.5 through 670.8 is applicable, it is unlawful to commit, attempt to commit, or cause to be committed any of the acts described in paragraphs (a) through (h) of this section.

(a) *Taking any native mammal or native bird.* It is unlawful for any United States citizen to take within Antarctica any native mammal or native bird.

(b) *Collecting native plants.* It is unlawful for any United States citizen to collect a native plant in a specially protected area.

(c) *Entry into designated area.* It is unlawful for any United States citizen to enter any specially protected area or to enter sites of special scientific interest, except sites of special scientific interest for which section 670.34 states no permit is required.

(d) *Possession and transfer of native mammals, plants or birds.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to possess, sell, offer for sale, deliver, receive, carry, transport, or ship by any means whatever any native plant collected in a specially protected area, or any native mammal or native bird taken in Antarctica.

(e) *Import into or export from the United States.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to import into the United States or export from the United States any native mammal or native bird or any native plant collected in a specially protected area.

(f) *Introduction of non-indigenous animals and plants into Antarctica.* It is unlawful for any United States citizen to introduce into Antarctica any animal or plant that is not indigenous to Antarctica as specified in Subpart J of this part, except as provided in §§ 670.7 and 670.8.

(g) *Violation of regulations.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to violate the regulations set forth in this part.

(h) *Violation of permit conditions.* It is unlawful for any permit holder, whether or not a United States citizen, to violate any term or condition of any permit issued under Subpart C of this part.

[44 FR 32699, June 7, 1979, as amended at 54 FR 24710, June 9, 1989]

§ 670.5 Exceptions in extraordinary circumstances.

(a) *Human life.* No act described in § 670.4 shall be unlawful if committed under emergency circumstances to prevent the loss of human life.

(b) *Aiding or salvaging native mammals or native birds.* The prohibition on taking shall not apply to taking native mammals or native birds if such action is necessary to:

(1) Aid a sick, injured, or orphaned specimen;

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(c) *Reporting.* Any actions taken under the exceptions in this section shall be reported promptly to the Director.

§ 670.6 Prior possession exception.

(a) *Exception.* Section 670.4 shall not apply to (1) any native mammal, bird or plant which is held in captivity on or before October 28, 1978, or (2) any offspring of any such mammal, bird, or plant.

(b) *Presumption.* With respect to any prohibited act set forth in § 670.4 which occurs after April 29, 1979, the Act creates a rebuttable presumption that the native mammal, native bird, or native plant involved in such act was not held in captivity on or before October 28, 1978, or was not an offspring referred to in paragraph (a) of this section.

§ 670.7 Food exception.

Paragraph (f) of § 670.4 shall not apply to the introduction of animals and plants into Antarctica for use as food so long as animals and plants used for this purpose are kept under controlled conditions. This exception shall not apply to living non-indigenous species of birds.

§ 670.8 Foreign permit exceptions.

Paragraphs (d) and (f) of § 670.4 shall not apply to transporting, carrying, receiving, or possessing native mammals, native plants, or native birds or to the introduction into Antarctica of non-indigenous animals and plants when conducted by an agency of the U.S. Government on behalf of a foreign national operating under a permit issued by a foreign government to give effect to the Agreed Measures.

Subpart C—Permits

§ 670.9 Applications for permits.

(a) *General content of permit applications.* All applications for a permit shall be dated and signed by the applicant and shall contain the following information:

(1) The name and address of the applicant;

(i) Where the applicant is an individual, the business or institutional affiliation the applicant; and

(ii) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of its president or principal officer.

(2) The scientific names and the numbers of native plants to be collected in a specially protected area; or the scientific names and the numbers of native mammals or native birds to be taken;

(3) A description of the native mammals, native birds, or native plants to be taken or collected, including as appropriate the age, size, sex, and condition, e.g., whether pregnant or nursing;

(4) A complete description of the location, time period, and manner of taking or collecting, including the proposed access to the location;

(5) Whether the native mammals, birds, or plants, or parts of them are to be imported into the United States, and if so, their ultimate disposition;

(6) Where the application is for the introduction of non-indigenous plants and animals, the scientific name and the number to be introduced;

(7) Whether agents as referred to in § 670.12 will be used; and

(8) The desired effective date of the permit.

(b) *Content of specific permit applications.* In addition to the general information required for permit applications set forth in this subpart, the applicant must submit additional information relating to the specific action for which the permit is being sought. These additional requirements are set forth in the sections of this part dealing with the subject matter of the permit applications as follows:

Native Mammals and Native Birds—§ 670.16.
Specially Protected Species—§ 670.21.
Native Plants—§ 670.25.
Specially Protected Areas—§ 670.29.
Sites of Special Scientific Interest—§ 670.33.
Import into or Export from the U.S.—§ 670.38.
Introduction on Non-Indigenous Plants and Animals—§ 670.42.

(c) *Certification.* Applications for permits shall include the following certification:

> I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. Any false statement will subject me to the criminal penalties of 18 U.S.C. 1001.

(d) *Address to which applications should be sent.* Each application shall be in writing, addressed to:

Permit Office, Division of Polar Programs,
National Science Foundation, Washington,
DC 20550.

(e) *Sufficiency of application.* The sufficiency of the application shall be determined by the Director. The Director may waive any requirement for information, or require such additional information as determined to be relevant to the processing of the application.

(f) *Withdrawal.* An applicant may withdraw the application at any time.

(g) *Publication of permit applications.* The Director shall publish notice in the FEDERAL REGISTER of each application for a permit. The notice shall invite the submission by interested parties, within 30 days after the date of publication of the notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

(Approved by the Office of Management of Budget under control number 3145-0034)

[44 FR 32699, June 7, 1979, as amended at 49 FR 37598, Sept. 25, 1984]

§ 670.10 General issuance criteria.

Upon receipt of a complete and properly-executed application for a permit and the expiration of the applicable public comment period, the Director will decide whether to issue the permit. In making this decision, the Director will consider, in addition to the specific criteria set forth in the appropriate subparts of this part:

(a) Whether the authorization requested meets the objectives of the Act and the requirements of these regulations;

(b) The judgment of persons having expertise in matters germane to the application; and

(c) Whether the applicant has failed to disclose material information required or has made false statements about any material fact in connection with his application.

§ 670.11 Permit administration.

(a) *Issuance of permits.* The Director may approve an application in whole or in part. Permits shall be issued in writing and be signed by the Director. Each permit may contain such terms and conditions as are consistent with the Act and this part.

(b) *Denial.* The applicant shall be notified in writing of the denial of any permit request or part of a request, and the reason for such denial. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application.

(c) *Amendment of applications or permits.* An applicant or permit holder desiring to have any term or condition of his application or permit modified must submit full justification and supporting information in conformance with the provisions of this subpart and the subpart governing the activities sought to be carried out under the modified permit. Any application for modification of a permit that involves a material change beyond the terms originally requested will normally be subject to the same procedures as a new application.

(d) *Notice of issuance or denial.* Within 10 days after the date of the issuance or denial of a permit, the Director shall publish notice of the issuance or denial in the FEDERAL REGISTER.

(e) *Agents of the permit holder.* The Director may authorize the permit holder to designate agents to act on behalf of the permit holder.

(f) *Marine mammals, endangered species and migratory birds.* If the Director receives a permit application involving any native mammal which is a marine mammal as defined by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)), any species which is an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or any native bird which is protected under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.), the Director shall submit a copy of the application to the Secretary of Commerce or to the Secretary of the Interior, as appropriate. If the appropriate Secretary determines that a permit should not be issued pursuant to any of the cited acts, the Director shall not issue a permit. The Director shall inform the applicant of any denial by the appropriate secretary and no further action will be taken on the application. If, however, the appropriate Secretary issues a permit pursuant to the requirements of the cited acts, the Director still must determine whether the proposed action is consistent with the Act and these regulations.

§ 670.12 Conditions of permits.

(a) *Possession of permits.* Permits issued under these regulations, or copies of them, must be in the possession of persons to whom they are issued and their agents when conducting the authorized action.

(b) *Display of permits.* Any permit issued shall be displayed for inspection upon request to the Director, designated agents of the Director, or any person with enforcement responsibilities.

(c) *Filing of reports.* Permit holders may be required to file reports of the activities conducted under a permit. Reports shall be submitted to the Director not later than June 30 for the preceding 12 months.

§ 670.13 Modification, suspension, and revocation.

(a) The Director may modify, suspend, or revoke, in whole or in part, any permit issued under this section:

(1) In order to make the permit consistent with any change to any regulation in this part made after the date of issuance of the permit;

(2) If there is any change in conditions which makes the permit inconsistent with the purpose of the Act and these regulations; or

(3) In any case in which there has been any violation of any term or condition of the permit, any regulation in this part, or any provision of the Act.

(b) Whenever the Director proposes any modifications, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation.

(c) Notice of the modification, suspension, or revocation of any permit by the Director shall be published in the FEDERAL REGISTER within 10 days from the date of the Director's decision.

§ 670.14 [Reserved]

Subpart D—Native Mammals and Native Birds

§ 670.15 Specific issuance criteria.

With the exception of specially protected species of mammals and birds designated in Subpart E of this part, permits to take a mammal or bird in Antarctica designated as a native mammal in § 670.17 or as a native bird in § 670.18 may be issued:

(a) Only for the purpose of providing—(1) Specimens for scientific study or scientific information, or

(2) Specimens for museums, zoological gardens, or other educational or cultural institutions or uses;

(b) Shall ensure, as far as possible, that—(1) No more native mammals or native birds are taken in any year than can normally be replaced by natural reproduction in the following breeding season, and

(2) The variety of species and the balance of the natural ecological systems within Antarctica are maintained; and

(3) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

§ 670.16 Contents of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to take a native mammal or native bird shall include a complete description of the project including the purpose of the proposed taking, the use to be made of the native mammals or native birds, and the ultimate disposition of the native mammals or native birds. Sufficient information must be provided to establish that the taking, transporting, carrying, or shipping will be humane.

§ 670.17 Designation of native mammals.

The following are designated native mammals:

Dolphin:
  Hourglass—Lagenorhynchus cruciger.
Seal:
  Crabeater—Lobodon carcinophagus.
  Elephant—Mirounga leonina.
  Kerguelen Fur—Arctocephalus gazella.[1]
  Leopard—Hydrurga leptonyx.
  Ross—Ommatophoca rossi.[1]
  Weddell—Leptonychotes weddelli.
Whale:
  Arnoux's Beaked—Berardius arnuxii.
  Killer—Orcinus orca.
  Long-finned Pilot—Globicephala melaena.
  Southern Bottlenose—Hyperoodon planifrons.

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[1] These species of mammals have been designated as specially protected species and are subject to Subpart E of this part.

§ 670.18 Designation of native birds.

The following are designated native birds:

Albatross:
  Black-browed—Diomedea melanophris.
  Gray-headed—Diomedea chrysostoma.
  Light-mantled Sooty—Phoebetria palpebrata.
  Wandering—Diomedea exulans.
Fulmer:
  Northern Giant—Macronectes halli.
  Southern—Fulmarus glacialoides.
  Southern Giant—Macronectes giganteus.
Gull:
  Southern Black-backed—Larus dominicanus.
Jaeger:
  Parasitic—Stercorarius parasiticus.
  Pomarine—Stercorarius pomarinus.
Penguin:
  Adelie—Pygoscelis adeliae.
  Chinstrap—Pygoscelis antarctica.
  Emperor—Aptenodytes forsteri.
  Gentoo—Pygoscelis papua.
  King—Aptenodytes patagonicus.
  Macaroni—Eudyptes chrysolophus.
  Rockhopper—Eudyptes crestatus.
Petrel:
  Antarctic—Thalassoica antarctica.
  Black-bellied Storm—Fregetta tropica.
  Blue—Halobaena caerulea.
  Gray—Procellaria cinerea.
  Great-winged—Pterodroma macroptera.
  Kerguelen—Pterodroma brevirostris.
  Mottled—Pterodroma inexpectata.
  Snow—Pagodroma nivea.
  Soft-plumaged—Pterodroma mollis.
  South-Georgia Diving—Pelecanoides georgicus.
  White-bellied Storm—Fregetta grallaria.
  White-chinned—Procellaria aequinoctialis.
  White-headed—Pterodroma lessoni.
  Wilson's Storm—Oceanites oceanicus.
Pigeon:
  Cape—Daption capense.
Pintail:
  South American Yellow-billed—Anas georgica spinicauda.
Prion:
  Antarctic—Pachyptila desolata.
  Narrow-billed—Pachyptila belcheri.
Shag:

Blue-eyed—Phalacrocorax atriceps.
Shearwater:
  Sooty—Puffinus griseus.
Skua:
  Brown—Catharacta lonnbergi.
  South Polar—Catharacta maccormicki.
Swallow:
  Barn—Hirundo rustica.
Sheathbill:
  American—Chionis alba.
Tern:
  Antarctic—Sterna vittata.
  Arctic—Sterna paradisaea.

§ 670.19 [Reserved]

Subpart E—Specially Protected Species of Mammals and Birds

§ 670.20 Specific issuance criteria.

Permits authorizing the taking of mammals or birds designated as a specially protected species of mammals and birds in § 670.22 may only be issued if:

(a) There is a compelling scientific purpose for such taking;

(b) The actions allowed under any such permit will not jeopardize the existing natural ecological system, or the survival of that species; and

(c) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

§ 670.21 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to take a specially protected species shall include the following in the application:

(a) A detailed scientific justification of the need for taking the specially protected species, including a discussion of possible alternative species;

(b) Information demonstrating that the proposed action will not jeopardize the existing natural ecological system or the survival of that species; and

(c) Information establishing that the taking, transplanting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

§ 670.22 Designation of specially protected species of mammals and birds.

The Act states that the Director shall designate as a specially protected species any native species of mammal or bird which is approved by the United States for special protection under the Agreed Measures. The following two species have been so approved and are hereby designated specially protected species:

Common Name and Scientific Name

Kerguelen Fur Seal—Arctocephalus tropicales gazella.
Ross Seal—Ommatophoca rossi.

§ 670.23 [Reserved]

Supbart F—Native Plants

§ 670.24 Specific issuance criteria.

Permits authorizing the collection of any native plant designated in § 670.26 from a specially protected area designated in § 670.30 may be issued only if

(a) There is a compelling scientific purpose for such collection which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the natural ecological system existing in that area.

§ 670.25 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to collect a native plant in a specially protected area shall include the following in the application:

(a) A detailed scientific justification of the need for the collection, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

§ 670.26 Designation of native plants.

All plants found in Antarctica are designated native plants, including:

Fungi—Lichens.
Vascular Plants—Marine algae.
Bryophytes—Freshwater algae.

§ 670.27 [Reserved]

Subpart G—Specially Protected Areas

§ 670.28 Specific issuance criteria.

Permits authorizing entry into any specially protected area designated in § 670.30 of this title may be issued only if

(a) There is a compelling scientific purpose for such entry which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the natural ecological system existing in that area.

No permit shall be issued that allows the operation of any surface vehicle in a specially protected area.

§ 670.29 Content of permit applications.

In addition to the information required in Subpart C of this part, and applicant seeking a permit to enter a specially protected area shall include the following in the application.

(a) A detailed scientific justification of the need for such entry, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

§ 670.30 Designation of specially protected areas.

The Act states the Director shall designate as a specially protected area, each area identified under the Agreed Measures as needing special protection. The following areas have been so identified and are designated as specially protected areas:

(a) Taylor Rookery, MacRobertson Land situated at Latitude 67° 26′ South, Longitude 60° 50′ East.

(b) Rookery Islands in Holme Bay.

(c) Ardery Island and Odbert Island in Vincennes Bay.

(d) Sabrina Island and Balleny Islands in the Ross Sea.

(e) Beaufort Island in the Ross Sea.

(f) Cape Hallett in Victoria Land.

(g) Dion Islands in Marguerite Bay.

(h) Green Island in the Berthelot Islands.

(i) Cape Shirreff on Livingston Island.

(j) Moe Island in the South Orkney Islands.

(k) Lynch Island in the South Orkney Islands.

(l) Powell Island (southern portion only), Fredriksen Island, Michelsen Island, Christofferson Island, Grey Island and all unnamed islands within one mile of these islands; all of which are part of the South Orkney Islands.

(m) Coppermine Peninsula on Robert Island.

(n) Litchfield Island in the Palmer Archipelago.

(o) North Coronation Island, South Orkney Islands.

(p) Lagotellerie Island, Marguerite Bay.

(q) New College Valley, Caughley Beach, Cape Bird, Ross Island.

Maps specifying these areas in greater detail may be obtained from the Director.

[44 FR 32699, June 7, 1979, as amended at 53 FR 27991, July 26, 1988]

§ 670.31 [Reserved]

Subpart H—Sites of Special Scientific Interest

§ 670.32 Specific issuance criteria.

Sites of Special Scientific Interest, designated in § 670.34, are sites where scientific investigations are being conducted or are planned and there is a demonstrable risk of interference which would jeopardize those investigations. Certain of these sites do not require limitations on entry to protect their value for scientific investigations. No permit is required for entry into these sites but entrants must comply with the managment plan. Permits to enter sites for which an entry permit is required may be issued only if the proposed entry is consistent with the management plan.

§ 670.33 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to enter a site of special scientific interest shall include the following in the application:

(a) The justification for such entry;

(b) Information demonstrating that the proposed action will not jeopardize the unique scientific value of the area; and

(c) A statement demonstrating the consistency of the proposed action with the management plan.

670.34 Designation of sites of special scientific interest and management plans for those sites.

(a) The Director is required to designate as a site of special scientific interest each area approved by the United States in accordance with Recommendation VIII-3 of the Eighth Antarctic Treaty Consultative Meeting. The Director is also required to prescribe a management plan for such sites which is consistent with any management plan approved by the United States in accordance with that Recommendation. Accordingly, the areas listed below are designated as sites of special scientific interest to be managed in accordance with the management plan recommended at the applicable consultative meeting and any subsequent amendments to that plan. The number of the recommendation, including any modifications made at subsequent consultative meetings, is included below after each site, as is the site number established at the consultative meetings. If there are any variations or additional management measures required by the United States they shall also be included in the listing below. Any specific conditions or limitations included in permits issued under this regulation will be consistent with these plans. More detailed maps and descriptions of the sites and the complete management plans as recommended at the consultative meetings can be obtained from the National Science Foundation, Division of Polar Programs, Washington, DC 20550.

(b) The sites of special scientific interest are as follows:

(1) *Cape Royds, Ross Island:* Site No. 1 as described in Recommendation VIII-4 as revised by Recommendations X-6, XII-5 and XIII-9.

(2) *Arrival Heights, Hut Point Peninsula, Ross Island:* Site No. 2 as described in Recommendation VIII-4 as revised by Recommendations X-6, XII-5, XIII-7 and XIV-4. This site does not require an entry permit.

(3) *Barwick Valley, Victoria Land:* Site No. 3 as described in Recommendations VIII-4 as revised by Recommendations X-6, XII-5 and XIII-7.

(4) *Cape Crozier, Ross Island:* Site No. 4 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(5) *Fildes Peninsula, King George Island, South Shetland Islands:* Site No. 5 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(6) *Byers Peninsula, Livingston Island, South Shetland Islands:* Site No. 6 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(7) *Haswell Island:* Site No. 7 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(8) *Western Shore of Admiralty Bay, King George Island:* Site No. 8 as described in Recommendation X-5 as revised in Recommendations XII-5 and XIII-7.

(9) *Rothera Point, Adelaide Island:* Site No. 9 as described in Recommendation XIII-8.

(10) *Caughley Beach, Cape Bird, Ross Island:* Site No. 10 as described in Recommendation XIII-8.

(11) *Tramway Ridge, Mt. Erebus, Ross Island:* Site No. 11 as described in Recommendation XIII-8.

(12) *Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land:* Site No. 12 as described in Recommendation XIII-8.

(13) *Potter Peninsula, King George Island, South Shetland Islands:* Site No. 13 as described in Recommendation XIII-8.

(14) *Harmony Point, Nelson Island, South Shetland Islands:* Site No. 14 as described in Recommendation XIII-8.

(15) *Cierva Point and nearby islands, Danco Coast, Antarctic Peninsula:* Site No. 15 as described in Recommendation XIII-8.

(16) *Bailey Peninsula, Budd Coast, Wilkes Land:* Site No. 16 as described in Recommendation XIII-8.

(17) *Clark Peninsula, Budd Coast, Wilkes Land:* Site No. 17 as described in Recommendation XIII-8.

(18) *White Island, McMurdo Sound:* Site No. 18 as described in Recommendation XIII-8.

(19) *Linnaeus Terrace, Asgaard Range, Victoria Land:* Site No. 19 as described in Recommendation XIII-8.

(20) *Biscoe Point, Anvers Island, Palmer Archipelago:* Site No. 20 as described in Recommendation XIII-8.

(21) *Shores of Port Foster, Deception Island, South Shetland Islands:* Site No. 21 as described in Recommendation XIII-8.

(22) *Yukidori Valley, Langhovde, Lutzow-Holm Bay:* Site No. 22 as described in Recommendation XIV-5.

(23) *Svarthamaren, Muhlig-Hofmannfjella, Dronning Maud Land:* Site No. 23 as described in Recommendation XIV-5.

(24) *Summit of Mt. Melbourne, North Victoria Land:* Site No. 24 as described in Recommendation XIV-5.

(25) *Marine Plain, Mule Peninsula, Vestfold Hills, Princess Elizabeth Land:* Site No. 25 as described in Recommendation XIV-5.

(26) *Chile Bay (Discovery Bay), Greenwich Island, South Shetland Islands:* Site No. 26 as described in Recommendation XIV-5.

(27) *Port Foster, Deception Island, South Shetland Islands:* Site No. 27 as described in Recommendation XIV-5.

(28) *South Bay, Doumer Island, Palmer Archipelago:* Site No. 28 as described in Recommendation XIV-5.

[54 FR 24710, June 9, 1989]

§ 670.35 [Reserved]

Subpart I—Import Into and Export From the United States

§ 670.36 Specific issuance criteria for imports.

Subject to compliance with other applicable law, any person who takes a native mammal or native bird or collects a native plant under a permit issued under these regulations may import it into the United States unless the Director finds that importation would not further the purpose for which it was taken or collected. If the importation is for a purpose other than that for which the native mammal or native bird was taken or the native plant collected, the Director may permit importation upon a finding that importation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

§ 670.37 Specific issuance criteria for exports.

The Director may permit export from the United States of any native plant taken from a specially protected area or of any native mammal or native bird upon a finding that exportation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

§ 670.38 Contents of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to import into or export from the United States a native plant taken from a specially protected area, a native mammal, or a native bird shall include the following in the application:

(a) Information demonstrating that the import or export would further the purposes for which the species was taken or collected; or

(b) Information demonstrating that the import or export is consistent with the purposes of the Act or these regulations; and

(c) A statement as to which U.S. port will be used for the import or export.

The application shall also include information describing the intended ultimate disposition of the imported or exported item.

§ 670.39 Entry and exit ports.

Any native plant collected in a specially protected area and any native mammal or native bird imported into or exported from the United States must enter or leave the United States at ports designated by the Secretary of Interior in 50 CFR Part 14. The ports presently designated are:

(a) New York, New York,
(b) Miami, Florida,
(c) Chicago, Illinois,
(d) San Francisco, California,
(e) New Orleans, Louisiana,
(f) Seattle, Washington,
(g) Honolulu, Hawaii.

Permits to import or export at non-designated ports may be sought from the Secretary of Interior pursuant to Subpart C, 50 CFR Part 14.

§ 670.40 [Reserved]

Subpart J—Introduction of Non-Indigenous Plants and Animals

§ 670.41 Specific issuance criteria.

For purposes consistent with the Act, only the following plants and animals may be considered for a permit allowing their introduction into Antarctica:

(a) Sledge dogs;

(b) Domestic animals and plants; and

(c) Laboratory animals and plants including viruses, bacteria, yeasts, and fungi.

Living non-indigenous species of birds shall not be introduced into Antarctica.

§ 670.42 Content of permit applications.

Applications for the importation of plants and animals into Antarctica must describe (a) the need for the plants or animals, (b) how the applicant will ensure that the plants or animals will not harmfully interfere with the natural system, and (c) how the plants or animals will be removed from Antarctica or destroyed after they have served their purpose.

§ 670.43 Conditions of permits.

(a) *General.* All permits allowing the introduction of non-indigenous plants and animals will require that the animal or plant be kept under controlled conditions to prevent harmful interference with the natural system and that after serving its purpose the plant or animal shall be removed from Antarctica or destroyed in a manner that protects the natural system of Antarctica.

(b) *Dogs.* In addition to the requirements of paragraph (a) of this section, all dogs imported into Antarctica shall be inoculated against the following diseases:

(1) Distemper;

(2) Contagious canine hepatitis;

(3) Rabies; and

(4) Leptospirosis (L. canicola and L. icterohaemorragicae).

Each dog shall be inoculated at least two months before importation, and a certificate of inoculation shall accompany each dog. No dog shall be allowed to run free in Antarctica.

§ 670.44 [Reserved]

Subpart K—Enforcement and Hearing Procedures; Tourism Guidelines

AUTHORITY: The Antarctic Conservation Act of 1978, 16 U.S.C. 2409(f); 2405; 2401-2412; The National Science Foundation Act, 42 U.S.C. 1861 et seq.

SOURCE: 54 FR 7132, Feb. 16, 1989, unless otherwise noted.

§ 670.50 Hearing procedures—Scope of these rules.

(a) These hearing rules govern all adjudicatory proceedings for the assessment of civil penalties or imposition of other sanctions pursuant to the Antarctic Conservation Act of 1978, 16 U.S.C. 2407; 2404(f); 2401-2412; and

(b) Other adjudicatory proceedings that the Foundation, in its discretion, determines are appropriate for handling under these rules, including proceedings governed by the Administrative Procedure Act requirements for "hearings on the record." 5 U.S.C. 554 (1982).

(c) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the Director or Presiding Officer.

§ 670.51 Definitions.

(a) Throughout these rules, words in the singular also include the plural, and words in the masculine gender also include the feminine, and vice versa.

(b) "Act" means the particular statute authorizing the initiation of the proceeding.

(c) "Administrative Law Judge" means an Administrative Law Judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95-251, 92 Stat. 183).

(d) "Complainant" means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be the Presiding Officer or any other person who will participate or advise in the decision.

(e) "Complaint" means a written communication, alleging one or more violations of specific provisions of the Act, Treaties, NSF regulations or a permit promulgated thereunder, issued by the complainant to a person under this subpart.

(f) "Consent Agreement" means any written document, signed by the parties, containing stipulations or conclusions of fact or law, and a proposed penalty, revocation or suspension of a permit, or other sanction.

(g) "Director" means the Director of the National Science Foundation (NSF) or his delegatee.

(h) "Final Order" means (1) an order issued by the Director after an appeal of an initial decision, accelerated decision, a decision to dismiss, or default order, or (2) an initial decision which becomes a final order.

(i) "Foundation," "Agency," or "NSF" means the National Science Foundation.

(j) "Hearing" means a hearing on the record open to the public and conducted under these rules.

(k) "Hearing Clerk" is the person with whom all pleadings, motions, and other documents required under this subpart are filed.

(l) "Initial Decision" means the decision issued by the Presiding Officer based upon the official record of the proceedings.

(m) "Party" means any person that participates in a hearing as complainant, respondent, or intervenor.

(n) "Permit" means a permit issued under section 5 of the Antarctic Conservation Act of 1978, 16 U.S.C. section 2404.

(o) "Person" includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(p) "Presiding Officer" means the attorney designated by the Director to conduct hearings or other proceedings under this subpart.

(q) "Respondent" means any person proceeded against in the complaint.

(r) Terms defined in the Act and not defined in these rules of practice are used consistent with the meanings given in the Act.

§ 670.52 Powers and duties of the Director; Presiding Official; Division of Polar Programs.

(a) *Director.* The Director of NSF shall exercise all powers and duties as prescribed or delegated under the Act and these rules.

(b) The Director may delegate all or part of his authority. Partial delegation does not prevent the Presiding Officer from referring any motion or case to the Director.

(c) *Presiding Officer.* The Director may designate one or more Presiding Officers to perform the functions described below. The Presiding Officers shall be attorneys who are permanent or temporary employees of the Foundation or some other Federal Agency and may perform other duties compatible with their authority as hearing officers. Administrative Law Judges may perform the functions of Presiding Officers. The Presiding Officer shall have performed no prosecutorial or investigatory functions in connection with any matter related to the hearing.

(d) The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production

thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of facts, law or discretion;

(9) Issue subpoenas authorized by the Act; and

(10) Take all actions necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(e) *Disqualification; Withdrawal.* (1) The Presiding Officer may not participate in any matter in which he (i) has a financial interest or (ii) has any relationship with a party or with the subject matter which would make it inappropriate for him to act. Any party may at any time by motion made to the Director, or his delegatee, request that the Presiding Officer be disqualified from the proceeding.

(2) If the Presiding Officer is disqualified or withdraws from the proceeding, the Director shall assign a qualified replacement who has none of the infirmities listed in paragraph (e)(1) of this section. The Director, should he withdraw or disqualify himself, shall assign the Deputy Director to be his replacement.

(f) *Division of Polar Programs.* The Division of Polar Programs (DPP) manages and operates the national program in Antarctica, including administration of the Antarctic Conservation Act (ACA) permit system. DPP is responsible for investigating alleged violations of the "prohibited acts" section of the ACA and alleged noncompliance with ACA permits. DPP will act as the official complainant in all proceedings under the ACA governed by these rules. DPP may delegate all or part of its investigatory duties to other appropriate NSF employees, other qualified federal employees, or consultants. DPP will prepare complaints with the assistance of designated prosecuting attorneys within NSF's Office of General Counsel, other qualified federal attorneys, or other appropriate legal representative selected jointly by DPP and OGC. The designated prosecuting attorney will represent DPP in all proceedings governed by these rules.

(g) The Division of Polar Programs, acting on behalf of the Director, may designate qualified individuals as enforcement officers empowered to execute all of the law enforcement functions set forth in section 10 of the ACA, 16 U.S.C. 2409, as well as any other appropriate actions ancillary to those statutory duties. DPP will provide each enforcement officer with official enforcement credentials for identification purposes and use during execution of official duties.

DPP may also designate knowledgeable individuals to provide educational and other information regarding the Antarctic to tour operators, their clients and employees, and other visitors to the Antarctic.

(h) The Division of Polar Programs shall prepare for publication and distribution a clear, concise explanation of the prohibited acts set forth in the Antarctic Conservation Act, and other appropriate educational material. The explanation may be translated into Spanish, French, German, or other foreign languages. This material shall be provided to tour operators for distribution to their passengers and crew prior to or during travel to the Antarctic. Tour operators shall distribute provided materials to each passenger and crew member.

(i) The Office of General Counsel, with the concurrence of the Division of Polar Programs, may refer appropriate cases to the Department of Justice for possible prosecution of criminal violations of the Antarctic Conservation Act.

§ 670.53 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of all other documents served in the proceeding, shall be filed with the Hearing Clerk.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided,

a party filing documents with the Hearing Clerk, after the filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with the parties, he shall file the original of the correspondence with the Hearing Clerk, maintain a copy in the duplicate file, and send a copy to all parties. Parties who correspond directly with the Presiding Officer shall in addition to serving all other parties send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleadings and documents*—(1) *Service of complaint.* (i) Service of a copy of the signed original of the complaint, together with a copy of these rules, may be made personally or by certified mail, return receipt requested, on the respondent or his representative.

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by paragraph (b)(1)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii) of this section.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof; or

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter, or other document (other than exhibits) shall be signed by the party filing it or by his representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules.

§ 670.54 Filing and service of rulings, orders, and decisions.

(a) All rulings, orders, decisions, and other documents issued by the Presiding Officer shall be filed with the Hearing Clerk. Copies of all such documents shall be served personally, or by certified mail, return receipt requested, upon all parties.

(b) *Computation.* In computing any period of time prescribed or allowed in these rules, except as otherwise provided, computation is by calendar days and does not include the day of the event from which the designated period begins to run. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(c) *Extensions of time.* The Presiding Officer may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (2) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(d) *Service by mail.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

(e) *Ex parte discussion of proceeding.* At no time after the issuance of the complaint shall the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in the proceeding or other factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Presiding Officer during the pendency of the proceedinq and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served upon all other parties. The Presiding Officer shall give the other parties an opportunity to reply.

(f) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Hearing Clerk.

(g) The person seeking copies of any documents filed in a proceeding shall bear the cost of duplication. Upon a formal request the Agency may waive this cost in appropriate cases.

§ 670.55 Appearances.

(a) *Appearances.* Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(b) *Intervention.* A motion for leave to intervene in any proceeding conducted under these rules must set forth the grounds for the proposed intervention, the position and interest of the movant, and whether the intervention will cause delay. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c) of this section, within ten (10) days after service of the motion for leave to intervene.

(c) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference, or if there is no such conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (b) of this section, a statement of good cause for the failure to file in a timely manner. Agreements, arrangements, and other matters previously resolved during the proceeding are binding on the intervenor.

(d) *Disposition.* The Presiding Officer may grant leave to intervene only if the movant demonstrates that (1) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (2) the movant will be adversely affected by a final order; and (3) the interests of the movant are not being adequately represented by the original parties. The intervenor becomes a full party to the proceeding upon the granting of leave to intervene.

(e) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Director shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, motions, and orders relating to issues to be briefed.

(f) *Consolidation.* The Presiding Officer may, by motion or sua sponte, consolidate any or all matters at issue in two or more proceedings docketed under these rules where (1) there exists common parties or common questions of fact or law; (2) consolidation would expedite and simplify consideration of the issues; and (3) consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(g) *Severance.* The Presiding Officer may, by motion or sua sponte, for good cause shown order any proceedings severed with respect to any or all parties or issues.

§ 670.56 Issuance of complaint.

(a) *General.* If the complainant has reason to believe that a person has violated any provision of the Antarctic Conservation Act, other Act or attendant regulations, or a permit issued under the ACA, he may institute a proceeding for the assessment of a civil penalty or other sanctions by issuing a complaint under the Act and these rules.

(b) If the complainant has reason to believe that (1) a permittee violated any term or condition of the permit, or (2) a permittee misrepresented or inaccurately described any material fact in the permit application or failed to disclose all relevant facts in the permit application, or (3) other good cause exists for such action, he may institute a proceeding for the revocation or suspension of a permit by issuing a complaint under the Act and these rules. A complaint may seek suspension or revocation of a permit in addition to the assessment of a civil penalty.

(c) *Content and amendment of the complaint.* All complaints shall include:

(1) A statement reciting the section(s) of the Act, regulations, and/or permit authorizing the issuance of the complaint;

(2) A concise statement of the factual basis for all alleged violations; and

(3) Notice of the respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the proposed sanction.

(d) Each complaint for the assessment of a civil penalty shall also include:

(1) Specific reference to each provision of the Act and implementing regulations which respondent is alleged to have violated;

(2) The amount of the civil penalty which is proposed to be assessed; and

(3) A statement explaining the reasoning behind the proposed penalty;

(e) Each complaint for the revocation or suspension of a permit shall also include:

(1) Specific reference to each term or condition of the permit which the respondent is alleged to have violated, to each alleged inaccuracy or misrepresentation in respondent's permit application, to each fact which the respondent allegedly failed to disclose in his permit application, or to other reasons which form the basis for the complaint;

(2) A request for an order to either revoke or suspend the permit and a statement of the terms and conditions of any proposed partial suspension or revocation; and

(3) A statement indicating the basis for recommending the revocation, rather than the suspension, of the permit, or vice versa.

A copy of these rules shall accompany each complaint served.

(f) *Derivation of proposed civil penalty.* The complainant shall determine the dollar amount of the proposed civil penalty in accordance with any criteria set forth in the Act and with any civil penalty guidance issued by NSF.

(g) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file his answer.

(h) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer.

(i) Complainant, in cooperation with the Office of General Counsel, may refer cases to the Department of Justice for possible criminal prosecution if there is reason to believe that respondent willfully violated the Antarctic Conservation Act or its attendant regulations. Such referral does not automatically preclude NSF from proceeding administratively under the Act and these rules against the same respondent.

§ 670.57 Answer to the complaint.

(a) *General.* Where respondent (1) contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint or the proposed revocation or suspension, as the case may be, is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer to the complaint with the Hearing Clerk. Any such answer to the complaint must be filed with the Hearing Clerk within twenty (20) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint. If respondent asserts he has no knowledge of a particular factual allegation, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which respondent intends to place at issue; and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. The Presiding Officer may deem the right to a hearing waived if it is not requested by respondent. In addition, a hearing may be held at the discretion of the Presiding Officer, sua sponte, to examine issues raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 670.58 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the basis or grounds with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, or other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party must file a response to any written motion within ten (10) days after service of such motion, unless the Presiding Officer allows additional time. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the Presiding Officer may deem the parties to have waived any objection to the granting of the motion. The Presiding Officer may also set a shorter time for response, or make such other appropriate orders concerning the disposition of motions.

(c) *Ruling on Motions.* The Presiding Officer shall rule on all motions, unless otherwise provided in these rules. The Presiding Officer may permit oral argument if he considers it necessary or desirable.

§ 670.59 Default order.

(a) *Default.* The Presiding Officer may find a party in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the respondent unless the complainant presents sufficient evidence to the Presiding Officer to establish a prima facie case against the respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. If the complaint is for the revocation or suspension of a permit, the conditions of revocation or suspension proposed in the complaint shall become effective without further proceedings on the date designated by the Presiding Officer in his final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. This order shall constitute the initial decision, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of law or discretion, and the penalty which is recommended, or the terms and conditions of permit revocation or suspension, or other sanctions.

(d) The Presiding Officer may set aside a default order for good cause shown.

§ 670.60 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning settlement whether or not the respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer.

(b) *Consent agreement.* The parties shall forward a written consent agreement and a proposed consent order to the Presiding Officer whenever settlement or compromise is proposed. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty or to the stated permit revocation or suspension, or to other sanctions or actions in mitigation. The consent agreement shall include any and all terms of the agreement, and shall be signed by all parties or their counsel or representatives.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under the rules without a consent order from the Director or his delegatee. Before signing such an order, the Director or his delegatee may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

(d) *Actions by respondent to clean, protect, enhance, or benefit the environment.* NSF may accept from respondent environmentally beneficial actions, in lieu of penalties, in whole or in part, assessed under the Antarctic Conservation Act. An assessment of the monetary value of any action in mitigation shall be made before that action is incorporated as a part of any consent agreement and order.

§ 670.61 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters which may expedite the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, each party at the prehearing conference shall make available to all other parties (1) the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony, and (2) copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. The Presiding Officer may exclude from evidence any document or testimony not disclosed at the prehearing conference. If the Presiding Officer permits the submittal of new evidence, he will grant parties a reasonable opportunity to respond.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or sua sponte. The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or sua sponte, may conduct a telephonic conference or direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

(e) *Other discovery.* (1) Except as provided by paragraph (b) of this section, further discovery shall be permitted only upon determination by the Presiding Officer that (i) such discovery will not in any way unreasonably delay the proceeding; (ii) the information to be obtained is not otherwise obtainable; and (iii) such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that (i) the information sought cannot be obtained by alternative methods; or (ii) there is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party may request further discovery by motion. Such a motion shall set forth (i) the circumstances warranting the taking of the discovery; (ii) the nature of the information expected to be discovered; and (iii) the proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order granting discovery, with any qualifying conditions and terms.

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to (i) the inference that the information to be discovered would be adverse to the party from whom the information was sought; or (ii) the issuance of a default.

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§ 670.62 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law regarding all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the respondent, may at any time dismiss an action without further hearing or upon such limited additional evidence as he requires, if complainant fails to establish a prima facie case, or if other grounds show complainant has no right to relief.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall then issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

§ 670.63 Scheduling the hearing.

(a) When an answer is filed, the Hearing Clerk shall forward the complaint, the answer, and any other documents filed thus far in the proceeding to the Presiding Officer, who will notify the parties of his assignment.

(b) *Notice of hearing.* If the respondent requests a hearing in his answer, or one is ordered by the Presiding Officer, the Presiding Officer shall serve upon the parties a notice setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than twenty (20) days prior to the date set for the hearing.

(c) *Postponement of hearing.* The Presiding Officer will not grant a request for postponement of a hearing except upon motion and for good cause shown.

§ 670.64 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Notwithstanding the preceding sentence, evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence is inadmissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its introduction into evidence. The Presiding Officer may review such evidence in camera, and issue appropriate protective orders.

(b) *Examination of witnesses.* Parties shall examine witnesses orally, under oath or affirmation, except as otherwise provided in these rules or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing.

(c) *Verified statements.* The Presiding Officer may admit into the record as evidence, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are "unavailable," within the meaning of that term under Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter judicially noticeable in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 670.65 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be made orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

§ 670.66 Burden of presentation; burden of persuasion.

The complainant has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed civil penalty, revocation, suspension, or other sanction, is appropriate. Following the establishment of a prima facie case, respondent has the burden of presenting and of going forward with any defense to the allegations set forth in the complaint. The Presiding Officer shall decide all controverted matters upon a preponderance of the evidence.

§ 670.67 Filing the transcript.

The hearing shall be transcribed verbatim. After the Presiding Officer closes the record, the reporter shall promptly transmit the original and certified copies to the Hearing Clerk and one certified copy directly to the Presiding Officer. A certificate of service shall accompany each copy of the transcript. The Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may obtain a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer.

§ 670.68 Proposed findings, conclusions, and order.

Unless otherwise ordered by the Presiding Officer, any party may submit proposed findings of fact, conclusions of law, and a proposed order, together with supporting briefs, within twenty (20) days after the parties are notified of the availability of the transcript. The Presiding Officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and relied-upon authorities.

§ 670.69 Initial decision.

(a) *Filing and contents.* The Presiding Officer shall issue and file with the Hearing Clerk an initial decision as soon as practicable after the period for filing reply briefs, if any, has expired. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, the reasons for the findings and conclusions, a recommended civil penalty assessment or other sanction, if appropriate, and a proposed final order. Upon receipt of an initial decision, the Hearing Clerk shall forward a copy to all parties, and shall send the original, along with the record of the proceeding, to the Director.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred, he shall set the dollar amount of the recommended civil penalty in the initial decision in accordance with any criteria set forth in the Act, and must consider any civil penalty guidelines issued by NSF. If the Presiding Officer decides to assess a penalty different in amount from the penalty recommended in the complaint, he shall set forth in the initial decision the specific reasons for the increase or decrease. The Presiding Officer shall not raise a penalty from that recommended in the complaint if the respondent has defaulted.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become the final order of the Agency within forty-five (45) days after its service upon the parties and without further proceedings unless (1) an appeal to the Director is filed by a party to the proceedings; or (2) the Director elects, sua sponte, to review the initial decision.

(d) *Motion to reopen a hearing.* A motion to reopen a hearing to take further evidence must be made no later than twenty (20) days after service of the initial decision on the parties and shall (1) state the specific grounds upon which relief is sought; (2) state briefly the nature and purpose of the evidence to be adduced; (3) show that such evidence is not cumulative; and (4) show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Hearing Clerk. Parties shall have ten (10) days following service to respond. The Presiding Officer shall grant or deny such motion as soon as practicable. The conduct of any proceeding which may be required as a result of the granting of any motion to reopen shall be governed by the provisions of the applicable sections of these rules. The filing of a motion to reopen a hearing shall automatically stay the running of all time periods specified under these Rules until such time as the motion is denied or the reopened hearing is concluded.

§ 670.70 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory orders or rulings.* Except as provided in this section, appeals to the Director or, upon delegation, to the General Counsel, shall obtain as a matter of right only from a default order, an accelerated decision or decision to dismiss, or an initial decision rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the Presiding Officer, upon motion of a party, certifies such orders or rulings to the Director on appeal. Requests for such certification shall be filed in writing within six (6) days of notice of the ruling or service of the order, and shall state briefly the grounds to be relied upon on appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may certify any ruling for appeal to the Director when (1) the order or ruling involves an important question of law or policy and there is substantial grounds for difference of opinion; and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate resolution of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Director or the General Counsel takes no action within thirty (30) days of the certification, the appeal is dismissed. If the Director or the General Counsel decides to hear the interlocutory appeal, he shall make and transmit his findings and conclusions to the Presiding Officer. When the Presiding Officer declines to certify an order or ruling to the Director on interlocutory appeal, it may be reviewed by the Director only upon appeal from the initial decision.

(d) *Stay of proceedings.* The Presiding Officer may stay the proceedings for an interlocutory appeal. Proceedings will not be stayed except in extraordinary circumstances. Where the Presiding Officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Director.

§ 670.71 Appeal from or review of initial decision.

(a) *Notice of appeal.* Any party may appeal any adverse initial decision of the Presiding Officer by filing a notice of appeal and an accompanying appellate brief with the Hearing Clerk and upon all other parties and amicus curiae within twenty (20) days after the initial decision is served upon the parties. The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant references to the record and the initial decision. The appellant's brief shall contain a statement of the issues presented for review, argument on the issues presented, and a short conclusion stating the precise relief sought, together with appropriate references to the record. Within twenty (20) days of the service of notices of appeal and briefs, any other party or amicus curiae may file with the Hearing Clerk a reply brief responding to argument raised by the appellant, together with references to the relevant portions of the record, initial decision, or opposing brief. Reply briefs shall be limited to the scope of the appeal brief.

(b) *Sua sponte review by the Director.* Whenever the Director determines sua sponte to review an initial decision, the Hearing Clerk shall serve notice of such intention on the parties within forty-five (45) days after the initial decision is served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the initial decision shall be limited to those issues raised by the parties during the course of the proceeding. If the Director determines that issues raised, but not appealed by the parties, should be argued, he shall give the parties or their representatives written notice of such determination to permit preparation of adequate argument. Nothing herein shall prohibit the Director from remanding the case to the Presiding Officer for further proceedings.

(d) *Argument.* The Director may, upon request of a party or sua sponte, assign a time and place for oral argument.

§ 670.72 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Director issues a notice of intent to conduct review sua sponte, the Director shall issue a final order as soon as practicable after the filing of all appellate briefs or oral argument. The Director shall adopt, modify or set aside the findings and conclusions contained in the decision or order being reviewed and shall set forth in the final order the reasons for his actions. The Director may, in his discretion, increase or decrease the assessed penalty from the amount recommended in the decision or order being reviewed, except that if the order being reviewed is a default order, the Director may not increase the amount of the penalty.

(b) *Payment of a civil penalty.* The respondent shall pay the full amount of the civil penalty assessed in the final order within sixty (60) days after receipt of the final order unless otherwise agreed by the parties. Payment shall be made by forwarding to the Hearing Clerk a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the Treasurer, United States of America.

(c) Money due and owing the United States by virtue of an unappealed final decision or settlement order may be collected by referral to the Department of Justice for appropriate civil action against respondent.

PART 680—NSF CONFLICT-OF-INTERESTS RULES AND STANDARDS OF CONDUCT: INTRODUCTION AND GENERAL PROVISIONS

Subpart A—Introduction to Regulations

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AUTHORITY: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

SOURCE: 47 FR 32131, July 26, 1982, unless otherwise noted.

Subpart A—Introduction to Regulations

§ 680.10 Introduction.

(a) Parts 680 through 684 of this Title 45 contain conflict-of-interests rules and standards of conduct for employees and former employees of the National Science Foundation.

(b) *"You", the NSF Employee.* The principal audience for these regulations is the NSF employee who must comply with and understand them. They are therefore addressed directly to you. Except where provisions plainly indicate otherwise, "you" includes every NSF employee. It includes not only permanent civil service employees, but "rotators" and persons working at the NSF under the Intergovernmental Personnel Act. It includes rehired annuitants. It includes part-time employees. It also includes any intermittent employees, temporary consultants, or members of the National Science Board who work or will work for the Government more than 130 days a year.

(c) *What is expected of you.* You are not expected to be familiar with every section of the regulations. You are expected to be thoroughly acquainted with a number of basic conflict-of-interests rules, which are summarized for you in § 680.13. You are also responsible for adhering to general "standards of employee conduct" that are laid out in § 680.16. (Full-time Presidential appointees should also be thoroughly acquainted with the special rules in § 680.15.) Beyond that the regulations are designed as a reference document and you need not cope with more detail than you find helpful until a problem or question comes up. Then, you should be able to find the detail you may need in Parts 681 through 683.

(d) *Consultants, Board members, and other "special employees".* Most consultants, members of the National Science Board, and other temporary or intermittent employees work for the Government *fewer* than 130 days a year and are therefore what the law calls "special Government employees". If you are such a "special employee", see Part 684 of these regulations. Part 684 states and explains the rules and standards you must observe. If you are a member of the National Science Board, Part 684 applies to you as to any other "special employee". Subpart B of Part 684 states and explains special rules of the National Science Board that apply only to its members.

(e) *Ethics counselors.* Within the Office of the General Counsel is an attorney designated by the General Counsel who has primary responsibility for conflict-of-interests matters and for liaison with the Office of Government Ethics. This attorney is the "ethics counselor". Working with the ethics counselor are one or more deputy ethics counselors. Whenever you have a conflict-of-interests problem or question and cannot find a clear answer in these regulations, consult an ethics counselor.

§ 680.11 Summary of conflicts rules.

(a) This section summarizes the principal conflicts rules that NSF employees (other than "special employees") are expected to observe. Section 680.13 summarizes specific conflicts-related responsibilities assigned to particular organizational units or officials by the regulations. Section 680.14 summarizes special rules for full-time Presidential employees. Rules for consultants, Board members, and other employees who work for the NSF 130 days a year or less are covered in Part 684.

(b) *Rules on handling proposals and awards.* (§§ 681.10 through 681.44) (1)

If you would normally handle a proposal or other application, but possess with respect to it an affiliation or relationship listed in § 681.21, you must bring the matter to the attention of a conflicts official in your directorate or staff office. The conflicts official will determine how the matter should be handled and will tell you what further steps to take.

(2) If you become aware that a prospective, current, or recent NSF employee has an involvement or interest in any proposal or other application you are handling, you must bring the matter to the attention of a directorate conflicts official. The conflicts official will decide how the matter should be handled and tell you what further steps to take. If the file reflects that a conflicts official has already been consulted and has decided how the matter should be handled, you may proceed as the conflicts official has directed, unless something of possible significance has changed.

(3) You must ask each peer reviewer of any proposal you are handling to indicate any possible conflicts of interests the reviewer may have. You should record in the proposal file all interests, affiliations, or relationships revealed by reviewers; determine how, if at all, they ought to affect the use of the review; and describe your determination in the file.

(c) *Representational restrictions and involvement with proposals and projects during and after NSF service.* (§§ 682.10 through 682.23) (1) *Current-employee restriction.* During your Federal employment you must not represent anyone (including yourself) in dealings with any Federal official on any proposal, project, or other matter.

(2) *One-year NSF restriction.* For one year after you leave NSF employment you must not represent anyone (including yourself) in dealings with any NSF official on any proposal, project, or other matter.

(3) *"Official responsibility" two-year restriction.* For two years after you leave NSF employment you must not represent anyone else in dealings with any Federal official on any proposal, project, or other matter involving specific parties if the same matter was active under your official responsibility during your last year at the NSF.

(4) *"Personal involvement" permanent restriction.* You must never represent anyone else in dealings with any Federal official on any proposal, project, or other matter involving specific parties if you were personally involved with the same matter as an NSF employee.

General effect: These representational restrictions do not preclude you from being involved as a researcher or educator with proposals submitted to the Government or projects supported by the Government. They do preclude you from negotiating with NSF officials or other Federal officials and from engaging in other representational activities intended to influence their decisions on certain proposals and projects. They do not preclude you from representing yourself before the Government on personal matters, such as audits of your individual tax returns or personnel decisions that affect you.

(d) *Financial disclosure.* (§§ 683.10 through 683.12)

(1) If you are an executive level, SES, or supergrade (GS-16 or equivalent and above) employee, you are a "senior employee" and must file public Financial Disclosure Reports.

(2) Otherwise, if you serve as either a program officer, a directorate administrative official, a grants officer, a contracts officer, an auditor, or a lawyer, you must file confidential Statements of Employment and Financial Interest.

(3) If you fit neither of these categories, no general financial disclosure is required of you.

(4) If you are required to file Financial Disclosure Reports or Statements of Employment and Financial Interests, the Foundation will supply the necessary forms. You may ask for them when you need them, but normally they will be sent to you automatically, with instructions.

(e) *Acts affecting your financial interests.* (§ 683.20) You must not be personally involved as a Federal employee in the handling of any matter in which you, a member of your immediate family, a business partner, or an organization of which you are or may become a part has a financial interest.

(f) *Outside employment, compensation, gifts, etc.* These rules are too numerous to summarize but they are not difficult to use. Refer to the referenced sections whenever you contemplate any of the following:

(1) Outside employment and income (§ 683.30);

(2) Compensation from private sources (§ 683.31);

(3) Honoraria (683.32);

(4) Reimbursement of expenses or receipt of meals, lodging, or travel tickets from private sources (§ 683.33);

(5) Use of inside Government information in connection with speeches, articles, or other private activities (683.34);

(6) Participation in an NSF-supported conference or workshop (§ 683.35); or

(7) Receipt of a gift, favor, loan, prize, or award (§ 683.36).

(g) *Political activity (Hatch Act).* (§§ 683.40 through 683.45)

(1) You may not run for public or party office, except in nonpartisan elections and certain local elections.

(2) You may not participate in election campaigning, except in nonpartisan elections and certain local elections.

(3) You may not take an active part in leading or managing a political party.

(4) You must not use your official authority or influence for political purposes.

§ 680.12 Underlying purposes and considerations.

(a) *Conflicts sensitivity.* This section outlines the primary sources of conflicts of interests and explains other considerations that underlie the conflicts rules. If you are sensitive to those considerations and identify situations in which someone might at least think that you have a conflict of interests, you will not be likely to violate the conflict-of-interests rules. When you do identify such a situation, of course, you can and should consult these regulations.

(b) *Effect of conflicts of interests.* There are two principal reasons why you and the NSF should avoid or minimize actual or apparent conflicts of interests.

(1) The success of the NSF in performing its scientific and other functions depends on the effectiveness of its proposal review process in ensuring that the best and most important work is supported. If judgments are warped because of conflicting interests, that effectiveness is compromised. The same is true of other NSF decision processes.

(2) The NSF must earn the confidence of the scientific community, the Congress, and the general public in the integrity, effectiveness, and evenhandedness of its proposal-review and other decision processes. It will not do so if the processes are seen to be compromised by conflicts of interests.

(c) *What is a conflict of interests?* A conflict of interests is a clash between an official's concern for the public interest and his or her private interests or allegiances. There are three primary sources: (1) Personal interests; (2) outside affiliations or relationships; and (3) gifts or favors. The examples that follow deliberately present situations that are not clear cut and do *not* illustrate specific rules you must follow. The pertinent rules appear elsewhere in these regulations.

(1) You might use your government position to further your *personal interests,* in conflict with the public interest.

Example: If as an NSF program official you recommended a conference of scientists in your field to discuss current issues, then chaired the conference yourself and delivered the principal paper, at least a inference suspicion would arise that you had used your Government position to further your own professional prestige or other personal interests.

(2) *Outside affiliations or relationships* could affect the objectivity of your judgments as a public official.

Example: A proposal comes to you for handling. You received your degree from the applicant institution and were a professor there until recently. The proposed principal investigator is your cousin. You have potential conflicts of interests arising from both your academic affiliation and your family relationship.

(3) *Gifts or favors* from those interested in agency decisions could affect the objectivity or integrity of your contribution to those decisions.

Example: The chairman of a university department that regularly sends proposals to your unit is in town. After a late afternoon meeting he proposes dinner at a restaurant on his expense account. Acceptance of the dinner would create a potential conflict between your debt of gratitude towards him and your disinterested pursuit of the public interest.

(d) *Inside access and influence.* A special concern that underlies many of the conflicts rules is that your insider's access to other Federal officials and your inside influence with them might allow you to sway their decisions or actions where you or those with whom you have ties are interested.

Example: A personal friend is principal investigator on a proposal pending in another part of your NSF unit. He asks you to check how things are going with that proposal. You talk with the program officer and division director handling the proposal. You not only check the status of the review, but mention what a fine scientist your friend is and how excellent his recent work has been. Your friendship with the investigator may influence your judgment on these points, and your inside influence may affect the actions and judgments of those with whom you talk. This creates a potential conflict between your private allegiance to your friend and the public interest.

(e) *Conflicts that require prohibition or disqualification.* Some conflicts of interests would so warp the performance of a Government agency or damage its credibility that they simply cannot be allowed to occur. (If a proposal from a member of your family or from your home institution comes into your program, for instance, you would clearly have to disqualify yourself from handling it.) Most Federal conflict-of-interests laws and a few conflicts rules special to the NSF deal with conflicts or potential conflicts of this sort. They therefore either flatly prohibit you from doing certain things that could give rise to such conflicts or disqualify you from participating in matters where you would have a potentially serious conflict.

(f) *Other conflicts.* By no means all conflicts of interests are so serious and clear that flat prohibitions or disqualifications are appropriate. Many conflicts, though real, are subtle, even remote. The seriousness of others so depends on circumstances of the particular case that unvarying rules would be impractical. There are also countervailing considerations. When we flatly prohibit Federal employees from doing things others who are not Federal employees are free to do, we tend to make Federal employment unattractive and so reduce the competence of Government. Also, disqualifying officials from being involved with particular matters may remove those who are best qualified by expertise or experience to make the required judgments or effect the required actions. For these reasons, the conflicts laws and regulations do not specifically address many potential or actual conflicts that are not serious enough to require flat prohibitions or disqualifications or not easily enough identified by general rule to permit them.

(1) In the handling of the proposals and other award-related applications, these regulations require that some such potential conflicts receive special attention from a designated directorate "conflicts official." The conflicts official considers the circumstances of each case and decides whether to require either a disqualification or some form of special handling. See Part 681.

(2) Other actual or potential conflicts may not be covered by any specific rule. You should nonetheless be sensitive to them and do whatever seems wise either to avoid them altogether or to ensure that they affect neither the quality of NSF decisions nor public trust in those decisions.

§ 680.13 Summary of additional responsibilities.

Apart from the conflicts rules for all employees summarized in the preceding section, these regulations impose the following additional responsibilities:

(a) *Directorates and staff offices.* Each directorate and staff office is responsible for designating "conflicts officials" and for making sure that all staff who handle proposals and other applications know who the conflicts officials are (§ 681.10(d)).

(b) *Directorate (and staff-office) "conflicts officials".* If your directorate or staff office has designated you as a conflicts official, your responsibilities are described in Part 681, Subpart D, (§§ 681.40–681.44).

(c) *Officials who are recruiting new professional employees.* If NSF officials who are recruiting determine that a person has become a "prospective employee", they are responsible for bringing that fact and subsequent developments to the attention of a directorate (or staff-office) conflicts official. Whenever a person currently listed in the NSF principal investigator/project director file seems likely to become an NSF employee, the directorate or office which has recruited that person must inform the Division of Information Systems by memo (so that the principal investigator/project director file can be "flagged" accordingly). It must also send copies of the memo to each NSF division or office that is responsible for an active award or pending proposal involving that person. These and related requirements are further described in Part 681, Subpart C, (§§ 681.30–681.33).

(d) *Directorate for Administration.* The Assistant Director for Administration is responsible for "flagging" the principal investigator/project director file to indicate those who are incoming, current, or recent employees (§ 681.33(d)).

§ 680.14 Summary of special rules for full-time Presidential appointees.

If you are a Presidential appointee, you are subject to special additional rules:

(a) You must file a public Financial Disclosure Report within 5 days of your nomination to your position by the President. (§ 683.11)

(b) You may not earn from other outside activities income totalling more than 15 percent of your Government salary in any calendar year. (§ 683.30)

(c) You are not subject to the restrictions on political activity, except to those concerning use of official authority or influence for political purposes. (§ 683.40)

[47 FR 32131, July 26, 1982, as amended at 51 FR 22939, June 24, 1986]

§ 680.15 General standards of employee conduct.

(a) *Summary.* This section covers some standards of conduct for Government employees that are not covered elsewhere in the NSF regulations. Most of them are basic standards of integrity, decency, and obedience to law. Violation of any of these standards is grounds for serious disciplinary action.

(b) *Underlying intent.* The intent of these regulations generally is that you should not:

(1) Engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or in any other conduct prejudicial to the Government or to Government efficiency or economy;

(2) Use your public office for private gain;

(3) Give preferential treatment;

(4) Have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with your Government duties and responsibilities;

(5) Engage directly or indirectly in financial transactions based on information obtained through your Government employment that is not available to the general public;

(6) Lose your independence or impartiality; or

(7) Make Government decisions outside of the proper official channels.

(c) *Preserving public trust.* You are responsible for helping to earn and maintain the confidence of the public in the integrity of the Government. This requires you to be concerned with appearances of as well as actual conflicts.

(d) *Payment of taxes and debts.* You are expected to pay your taxes and your just debts properly and on time. ("Just debts" means those you acknowledge or that have been reduced to final judgment. The Government will not try to determine the validity or amount of any disputed debt.)

(e) *Gambling.* You must not gamble in a Government office or while on duty. This includes participating in a sports pool or a lottery not officially sanctioned by the NSF.

(f) *Familiarity with statutory provisions.* You are legally responsible for acquainting yourself with each statute that relates to your conduct as an NSF and Federal employee. Principal among these are the criminal statutes relating to bribery, graft, and conflicts of interests contained in 18 U.S.C. 201 through 209; these regulations cover those provisions as they apply to NSF employees. These regulations also cover the provisions of Executive Order 11222, which prescribes standards of ethical conduct for Government officers and employees. They cover regulations of the Office of Personnel and Management that implement both the criminal statutes and the Executive Order. If you follow these regulations, you should have no trouble with any of those provisions. Not covered in these regulations, however, are the following statutory provisions:

(1) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(2) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(3) The prohibitions against disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and disclosure of confidential information (18 U.S.C. 1905).

(4) The provision relating to habitual use of intoxicants to excess (5 U.S.C. 7352).

(5) The prohibition against misuse of a Government vehicle (31 U.S.C. 638a(c)).

(6) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(7) The prohibition against use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(8) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(9) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(10) The prohibition against counterfeiting or forging transporation requests (18 U.S.C. 508).

(11) The prohibitions against embezzling Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzling the money or property of an employee by reason of his employment (18 U.S.C. 654).

(12) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(13) The prohibition against acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 680.16 Key terms.

Except where provisions plainly indicate otherwise, certain other terms are used throughout these regulations in standard meanings:

(a) "Award" means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(b) "Project" means the unit of work that an award supports or helps support.

(c) "Proposal" means an application for an award and includes a bid.

(d) "Other award-related application" means a request for an award amendment, for an increment to a continuing grant, for a no-cost extension, or for an administrative approval.

(e) "Institution" means any university, college, business firm, research institute, professional society, or other organization. It includes any university consortium or joint corporation such as AUI, AURA, or JOI, Inc., but not the universities that belong to it. It includes all parts of a university or college, including separate campuses. It does not include other universities or colleges in a multi-institution state or city system, unless you are an employee of the central system offices or an officer, trustee, or equivalent of the system as a whole.

(f) "Directorate" means an NSF directorate, staff office, or other organization that reports immediately to the NSF Director.

(g) "Program Officer" includes assistant and associate program officers or program managers.

Subpart B—Statutory Exemptions

§ 680.20 Necessity and effect of formal exemptions.

The exemptions described in this subpart are provided for by statute, which requires that they be formally promulgated. This subpart provides the formal promulgation and gives notice to the public. If you are an NSF employee, you need not be concerned with them. Anything you need to know that follows from them is either covered elsewhere in these regulations or will be explained if occasion arises by an ethics counselor.

§ 680.21 Exemptions under 18 U.S.C. 208(b).

(a) The Foundation exempts the interests described in the remainder of this section from the operation of section 208(a) and from case-by-case formal determinations under section 208(b)(1) of Title 18, United States Code.

(b) *Minor interests.* The following financial interests are too inconsequential to affect the integrity of an employee's services to the Government:

(1) Noncorporate bonds;

(2) Shares in a well-diversified money market or mutual fund;

(3) Stocks, bonds, or other securities of a corporation listed on the New York or American Stock Exchange if the aggregate market value of all the securities you hold in that corporation does not exceed $1,000;

(4) Vested pension rights to which no further contributions are being made by your former employer.

(c) *Indirect interests.* An NSF employee may be a stockholder, partner, employee, officer, or director of an institution, such as a mutual fund, that owns a financial interest in a second institution. If the owning institution's financial interest consists of securities or other evidences of debt of the second institution that amount to:

(1) Less than 5 percent of the total portfolio of investments of the owning institution,

(2) Less than 5 percent of the total outstanding amounts of the same classes of securities of the second institution, and

(3) Less than would be needed to obtain effective control of the second institution,

then the interest is too remote and inconsequential to affect the integrity of the employee's services to the Government.

(d) *Policy determinations.* Where a general policy determination of the Government might constitute a "particular matter" under 18 U.S.C. 208(a) and might affect the home institution of an NSF officer or employee, but only in the same manner as all similar institutions, the officer or employee may participate in that determination.

(e) *Support services for National Science Board tasks and responsibilities.* A member of the National Science Board may need professional, clerical, and administrative services to support the member's personal efforts to carry out Board tasks and responsibilities. With the approval of the Director and the Chairman of the National Science Board and in accordance with other laws and regulations, the NSF may contract with the home insitution of the member to provide such services. The institution may receive reimbursement of all allowable costs, but no profit or fee. In such circumstances any financial interests the institution might have are normally too inconsequential to affect the integrity of the services provided by the Board member to the Government.

PART 681—CONFLICTS OR POTENTIAL CONFLICTS IN HANDLING PROPOSALS AND AWARDS

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681.10 Summary.

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681.44 Handling prospective-employee determinations.

AUTHORITY: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

SOURCE: 47 FR 32135, July 26, 1982, unless otherwise noted.

Subpart A—Summary

§ 681.10 Summary.

(a) Two types of problems could affect the judgments of program officers and other NSF officials who handle proposals and other applications:

(1) The official might possess outside interests, affiliations, or relationships that could create bias; or

(2) Another NSF employee could have an involvement or interest in the proposal or application.

Whenever either of these problems arises, the official who would normally handle the proposal or other application is asked to bring the problem to the attention of a "directorate conflicts official". This conflicts official examines the case; decides what disqualifications or special handling arrangements, if any, are called for; and places a memo in the file explaining the circumstances and any arrangements made to deal with them. In some cases disqualifications are routine or automatic.

(b) Peer reviewers can also have interests, affiliations, or relationships that might affect their reviews. Reviewers are asked to reveal any such interests, affiliations, or relationships. Those are then taken into account by NSF officials in making decisions or recommendations based on the reviews.

(c) If you are a program officer or other NSF official who handles proposals and other award-related applications, your responsibilities in these matters are explained in Subpart B (§§ 681.20-681.26).

(d) Each directorate or staff office of the Foundation is responsible for designating "conflicts officials" and for making sure that all staff who handle proposals and other applications know who the conflicts officials are. The conflicts officials need not be in the directorate front office. They could, for example, be division directors.

(e) If you have been designated as a directorate (or staff office) conflicts official, your responsibilities in these matters are explained in Subpart D (§§ 681.40 through 681.44) of this part, which also provides guidance to help you carry out those responsibilities.

Subpart B—Guidance for Program Officers and Other Decision-making Officials

§ 681.20 Introduction.

(a) If you are a progam officer or other NSF official who would normally handle a proposal or other application, but you possess with respect to it a potentially biasing affiliation, listed in § 681.21, that section explains what you should do.

(b) If you become aware that another NSF employee)—including a prospective employee or a recent employee (one who has left the NSF within the past year)—or a current member of the National Science Board has an involvement or interest in a proposal or other application you are handling, § 681.23 explains what you should do.

(c) You must ask each peer reviewer of any proposal or project you are handling to indicate any possible conflicts of interest the reviewer may have. Section 681.25 suggests how you should do that and explains what you should do when a reviewer does have a possible conflict.

(d) Should an employee of another Government agency have an interest in a proposal or other application submitted by anyone other than that agency, do not talk or correspond with that employee at all without first consulting an ethics counselor. He or she could inadvertently violate a criminal statute.

(e) You "handle" a proposal or other applicaton if you recommend a decision on it, make or approve the decision, or otherwise substantially influence the decision. If you are a grants officer, contracts officer, financial official, or lawyer you are affected if you play a significant role in decisions on award budgets or terms. If in doubt, consult an ethics counselor in the Office of the General Counsel.

(f) This part covers only conflicts and potential conflicts in handling proposals and other award-related applications. Conflicts or potential conflicts in handling other matters are covered in § 683.20.

[47 FR 32135, July 26, 1982, as amended at 48 FR 52732, Nov. 22, 1983]

§ 681.21 When you have a potentially biasing affiliation or relationship.

(a) If you would normally handle a proposal or other application, but possess with respect to it a potentially biasing affiliation or relationship listed below, you must bring the matter to the attention of a conflicts official in your directorate or staff office. You must do so whether or not the affiliation or relationship is also designated "normally disqualifying" or "automatically disqualifying". (Some affiliations or relationships are neither.) The conflicts official will determine how the matter should be handled and will tell you what further steps to take.

(b) *Affiliations with an applicant institution.* (1) Current appointment at the institution as professor, adjunct professor, visiting professor, or the like [automatically disqualifying].

(2) Current employment or being under consideration for employment at the institution [automatically disqualifying].

NOTE: This may include employment via a consulting or advisory arrangement; check with an ethics counselor.

(3) Any formal or informal reemployment arrangement with the institution [automatically disqualifying].

(4) Current membership on a visiting committee or similar body at the institution [automatically disqualifying, but only for proposals or applications that originate from the department, school, or facility that the visiting committee or similar body advises].

(5) Ownership of the institution's securities or other evidences of debt [automatically disqualifying].

NOTE: Minor or indirect holdings may be exempted; see § 680.21 or check with an ethics counselor.

(6) Any office, governing board membership, or *relevant* committee chairmanship in the institution [automatically disqualifying].

NOTE: Ordinary membership in a professional society or association is not considered an office.

(7) Current enrollment as a student [normally disqualifying, but only for proposals or applications that originate from the department or school in which one is a student].

(8) Receipt and retention of an honorarium or award from the institution within the last twelve months [automatically disqualifying].

(c) *Relationships with an investigator, project director, or other person who has a personal interest in the proposal or other application.* (1) Known family or marriage relationship [automatically disqualifying if the relationship is with a principal investigator or project director].

(2) Business or professional partnership [automatically disqualifying].

(3) Employment at the same institution within the last 12 months.

(4) Past or present association as thesis advisor or thesis student.

(5) Collaboration on a project or on a book, article, report, or paper within the last 48 months.

(d) *Other affiliations or relationships.* (1) Any affiliation or relationship of your spouse, of your minor child, of a relative living in your immediate household or of anyone who is legally your partner that you are aware of and that would be covered by (b) or (c) of this section, if it were yours [disqualifying just as if the affiliation or relationship were yours, except for receipt by your spouse or relative of an honorarium or award, which is not necessarily disqualifying].

(2) Any other relationship, such as close personal friendship, that you think might tend to affect your judgments or be seen as doing so by a reasonable person familiar with the relationship.

§ 681.22 "Automatically disqualifying"; "normally disqualifying".

(a) *"Automatically disqualifying".* If you have an interest, affiliation, or relationship that § 681.21 designates "automatically disqualifying", you should disqualify yourself from handling the affected proposal or other application. You must not participate in handling it *under any circumstances.* BE CAREFUL: in most cases a violation of this rule would be a Federal crime.

(b) *"Normally disqualifying".* If you have an interest, affiliation, or relationship that § 681.21 designates "normally disqualifying", you should disqualify yourself from handling the affected proposal or other application, *unless specifically directed to do otherwise by the conflicts official.*

§ 681.23 When a prospective, current, or recent NSF employee has an involvement or interest.

(a) If you become aware that a prospective, current, or recent NSF employee has an involvement or interest in any proposal or other application you are handling, you must bring the matter to the attention of a directorate conflicts official. For this purpose a member of the National Science Board is an employee. The conflicts official will decide how the matter should be handled and instruct you accordingly. If the file reflects that a conflicts official has already been consulted and has decided how the matter should be handled, you may proceed as the conflicts official has directed unless something of possible significance has changed.

(b) *What constitutes "an involvement or interest".* A prospective, current, or recent NSF employee "has an involvement or interest" in a proposal or other application if the employee is, was, or will be a member of the research group or project staff involved. If the employee was a member of a research group, but has since ceased working on the project and with the group, the employee no longer has an involvement or interest. Unless there has been such a severance, however, appointment of a substitute principal investigator or substitute negotiator would not affect the requirement for consulting a conflicts official.

(c) *Finding out about it.* How do you find out that someone who has an involvement or interest in a proposal or application is a current, prospective, or recent NSF employee? There are four possibilities:

(1) The proposal or application might say so.

(2) The Foundation's principal investigator/project director file that you routinely check when beginning work on a new proposal will usually indicate that a listed investigator is a current, prospective, or recent NSF employee if that is the case. The mechanism by which this is arranged is explained in § 681.33.

(3) You might receive a copy of a memorandum from another NSF official indicating that an investigator on a proposal already pending or an award already active has become a prospective employee. The circumstances under which such a memorandum will be sent to you are also explained in § 681.33.

(4) You might happen to know or learn of the person's NSF employment or prospective employment through your other activities.

(d) *Your responsibility.* No matter how you find out, once you do, it is your responsibility to bring the matter to the attention of a directorate conflicts official—unless, of course that has already been done. If in doubt, consult the conflicts official or an ethics counselor.

[47 FR 32135, July 26, 1982, as amended at 48 FR 52732, Nov. 22, 1983]

§ 681.24 Directorate conflicts officials.

Your directorate or office is responsible for letting you know who your conflicts officials are. If you do not know, check with the office of the assistant director or office head. Subpart D (§§ 681.40 through 681.44) explains the responsibilities of the conflicts officials and provides guidance for them.

§ 681.25 Possible conflicts of peer reviewers.

(a) You must ask each peer reviewer of any proposal or similar application you are handling to indicate any possible conflicts of interests the reviewer may have.

(b) In the case of mail review, you may do this by including in the letter requesting the review the following language:

> If you have any relationships with the institution or the persons submitting this proposal, please consider whether they could be construed as creating a conflict of interests for you. Please describe in your own words any relationship that might be so construed. You may use a separate piece of paper and attach it to your review. Regardless of any such relationships, we would like to have your review unless you believe you cannot be objective.

(c) In the case of panel review, you should make an oral request of the panel members, essentially as follows:

> If when we come to consider any particular proposal, you recognize that you have a relationship with the institution or persons submitting the proposal that could be construed as creating a conflict of interests, please let me know. I'll ask you to describe the relationship in your own words and will determine from your description what to do about the situation. You must not participate in reviewing any application in which you or a member of your immediate family or an organization of which you are or may become a part has a financial interest. Otherwise, we'll often just make a note in the file to consider when making final recommendations.

(d) You may use the list in § 681.21 as a guide in responding to reviewer questions about the relationships that should be considered. Section 684.15 explains when a panel reviewer, like any other "special employee", must be excused from review of an application because of a financial interest. Otherwise, no advance disqualification of reviewers is required. There may be other circumstances, though, in which you and the reviewer will conclude that the review would have to be disregarded and would thus be a waste of the reviewer's time.

(e) You should record in the proposal file all interests, affiliations, and relationships revealed by reviewers or otherwise known to you. You should determine how, if at all, those interests, affiliations, or relationships ought to affect the use of the review in assessing the proposal. You should describe in the file both your determination and the reasoning behind it.

Subpart C—Identifying Prospective, Current, or Recent NSF Employees and Proposals or Awards in Which They Have an Interest

§ 681.30 General.

Sections 681.23 and 681.43 provide for special handling of any proposal or other application in which a prospective, current, or recent NSF employee has an involvement or interest. Section 681.23(c) explains generally how an official who handles a proposal or application might learn that a person who has an involvement or interest is a prospective, current, or recent employee. This Subpart:

(a) Explains more precisely who is a "recent employee", or "prospective employee" (§ 681.31);

(b) Identifies responsibilities of the recruiting directorate or office when a person becomes a "prospective employee" (§ 681.32);

(c) Explains how the recruiting directorate should inform others when it becomes clear that a prospect will become an NSF employee (§ 681.33(a)); and

(d) Requires the Assistant Director for Administration to provide for "flagging" the principal investigator/project director (PI/PD) file to indicate that a person listed there is a prospective, current, or recent NSF employee (§ 681.33(d)).

§ 681.31 "Recent employee"; "prospective employee".

(a) *"Recent employee".* Any former NSF employee who left the NSF within the year before the affected proposal or other application is filed with the NSF should be considered a recent NSF employee.

(b) *"Prospective employee" threshold.* As soon as those recruiting have expressed interest in a particular person in connection with a specific opening and have received some indication of reciprocal interest, that person should be considered a prospective NSF employee—even though no actual offer has been made and even though there is substantial doubt that one would be accepted if it were made. More specifically:

(1) NSF officials who have an opening on the horizon often discuss it with persons outside the NSF. If the discussion is just a general effort to make members of the appropriate community aware of the opening in the hope that applicants will appear, it makes no one a prospective employee. But if the discussion is with a particular individual whose candidacy is sought for a particular position, that individual should be considered a prospective employee if (but only if) the candidate expresses some interest. The expression of interest need not be strong. It could amount to no more than a willingness to "think it over" or come in for a talk. After such an expression of interest NSF officials could be influenced in decisions on proposals or other applications by their hopes of getting the candidate to consider the job or to take it.

(2) When a specific vacancy is imminent, the NSF usually solicits and receives applications. Some applications may come from persons in whom there is little or no interest. Others may come from persons the recruiters have never met. Conflicts are unlikely to arise in such cases unless and until the recruiters become sufficiently interested to initiate some direct contact with the applicant, typically by suggesting an interview. At that point the applicant should be considered a "prospective employee". If no direct contact is ever initiated outside the personnel mechanics, the applicant need not be considered a prospective NSF employee.

§ 681.32 What the recruiting directorate or office should do when a person becomes a "prospective NSF employee".

(a) Special attention and special handling of proposals or other applications in which a prospective NSF employee has an involvement or interest are not required automatically. They are required under § 681.23(a) only if an official handling the proposal or application actually becomes aware that a person involved or interested is a prospective employee. Whether to inform other officials that a person is a prospective employee is within the discretion of a conflicts official of the recruiting directorate or office.

(b) If those who are recruiting determine that a person has become a prospective employee under these guidelines, they are responsible for bringing that fact and subsequent developments to the attention of a directorate or office conflicts official. This should be an official who is not directly involved in the recruitment and does not immediately supervise the position for which the prospective employee is being considered.

(c) The conflicts official is responsible for deciding whether, when, and to what extent proposals or other applications involving the prospect require special attention and special handling. See § 681.44.

§ 681.33 Informing others about incoming employees; "flagging".

(a) *When a "prospective employee" becomes an "incoming employee".* Each directorate is responsible for informing the Division of Information Systems by memo whenever a prospective employee listed in the NSF PI/PD (principal investigator/project director) file seems likely in fact to become an NSF employee. The memo should be sent at least as soon as the incoming employee enters into discussions of grade and salary with personnel officials. It might be sent sooner should the responsible conflicts official of the recruiting directorate or office find that appropriate. The memo should identify all active NSF awards and pending NSF proposals with which the prospective employee has an association. This should be checked with the PI/PD file *and* with the prospective employee.

(b) *Informing other divisions.* The recruiting directorate is also responsible for sending copies of its memo to each NSF division or office that is responsible for such an active award or pending proposal.

(c) *"Signals off".* If the prospect does not become an NSF employee after all, the recruiting directorate is responsible for notifying by memo all those who received its original memo.

(d) *"Flagging".* The Assistant Director for Administration is responsible for "flagging" the PI/PD file to indicate every person listed there who is a current or recent NSF employee or who has been identified in a memo from the recruiting directorate or office as an incoming NSF employee.

Subpart D—Guidance for Directorate Conflicts Officials

§ 681.40 Summary; responsibilities of conflicts officials.

(a) If your directorate or staff office has designated you as a conflicts official, you have three responsibilities under these regulations:

(1) You determine how to handle a proposal or other application when an official who would normally handle it possesses with respect to it an affiliation or relationship listed in § 681.21. The potential conflicts you should be concerned with in such a case are generally apparent from the nature of the affiliation or relationship.

(2) You determine how to handle a proposal, or other application when a prospective, current, or recent NSF employee or a current member of the National Science Board has an involvement or interest in it. Section 681.43 describes the potential conflicts you should be concerned with in such a case.

(3) You determine whether, when, and to what extent proposals or other applications involving a prospective NSF employee require special attention and special handling. Section 681.44 offers guidance for such determinations.

(b) Section 681.41 describes the underlying considerations you are called upon to accommodate and balance in making these determinations. Section 681.42 describes the disclosure that is required in all cases that come to you for determination and the forms of special handling you might require in such cases. It also explains what you should do when a particular relationship is considered "automatically disqualifying" or "normally disqualifying".

[47 FR 32135, July 26, 1982, as amended at 48 FR 52732, Nov. 22, 1983]

§ 681.41 Making determinations: underlying considerations.

When you are called upon to make any of the determinations described in § 681.40, what considerations should influence you in deciding what to do?

(a) The primary purpose of your involvement is to remove or limit the influence of any ties to an applicant institution, investigator, etc. that you think could affect the decisions of an NSF official. Keep in mind that an official may be influenced by such ties without deliberate bias Do not, however, "strain at gnats".

(b) A secondary purpose is to preserve the trust of the scientific community, the Congress, and the general public in the integrity, effectiveness, and even-handedness of the NSF and its award-review processes. This requires you to be concerned with appearances as well as actualities.

(c) An important countervailing consideration is to avoid distorting NSF judgments on proposals and other applications by disqualifying those who are most competent to make the judgments. So far as possible, you should ensure that those who handle a proposal or other application are competent in the scientific or technical fields involved and are capable of judging the standing of a proposal in comparison with other proposals in the same field.

(d) Occasionally, action on a proposal or other application raises significant policy questions. As far as possible, you should avoid preventing an official who is responsible for the policy judgments in question from exercising that responsibility.

(e) Finally, you can and should consider the extra paperwork, effort, and expense to the taxpayer required by any special handling you might require.

Except where an interest, affiliation, or relationship is designated "normally disqualifying" or "automatically disqualifying", finding ways to accommodate and balance these competing considerations is left to your ingenuity and judgment.

§ 681.42 Disclosure, disqualification, and other special handling.

(a) *Disclosure.* In every case brought to you as a conflicts official, you should prepare a simple memo for the file. The memo need not be in any particular format and may be handwritten. It should identify the potential conflicts problem involved and should explain what special handling, if any, you have required. Even if you require no additional special handling, the memo will ensure that the Foundation is open about the potential conflict and attentive to it. It will allow those reviewing the recommended action at higher levels to consider any effect the potential conflict might have had and alert them to scrutinize the action more closely. It will allow meaningful audit and oversight and so protect those involved, including you. And it will help preserve public trust in the NSF and in NSF decisions.

(b) *Disqualification.* In some cases disclosure alone will be insufficient to protect against distortion of NSF decisions or undermining of public trust in the NSF and NSF decisions. On conflicts considerations alone, disqualification of the official who possesses the potential conflict is the best solution. But if the official has unique scientific or technical competence, is uniquely qualified to judge the competitive standing of a proposal, or has responsibility for policy judgments raised in the decision—disqualification of that official would have serious disadvantages. Although decisions on the kind and degree of special handling that should be required are often left to your discretion, more inflexible disqualification rules do apply in the case of certain interests and affiliations.

(1) If an interest or affiliation is labelled "automatically disqualifying" in § 681.22, you *must* disqualify any official who possesses such an interest or affiliation with respect to the proposal or application concerned. In most cases, the disqualification is required by criminal law. If you were to allow the official to take any part in the handling of the proposal or application, you would place him or her (and conceivably even yourself) in jeopardy of fine or imprisonment.

(2) If an interest or affiliation is labelled "normally disqualifying" in these regulations, you should normally disqualify any official who possesses such an interest or affiliation with respect to the proposal or application concerned. If unusual circumstances require that such an official be allowed to act on the proposal or application, your memo to the file should carefully explain those circumstances and what other precautions you have taken to minimize the potential for bias. Even then, you should not proceed until you have consulted an ethics counselor and the ethics counselor concurs.

(3) Even if an interest or affiliation is *not* labled "automatically" or "normally" disqualifying, disqualification may be called for. Your judgment should depend heavily on the extent to which someone else who will be able to substitute effectively for the official might be disqualified.

(c) *Other special handling.* You are not confined to relying either on disclosure only or on complete disqualification. Other, intermediate solutions can also go a long way toward removing or minimizing any potential for bias. For example:

(1) Sometimes you might allow a case to be handled normally, but provide for extra peer reviews or extra review within the NSF.

(2) Sometimes you might have an official perform some functions but not others. The official might be able to supply a list of potential reviewers, for example, without running into serious conflicts. Or the official might be consulted by a substitute official on the competitive range in the program

where the substitute is competent enough to read reviews and judge the merit of a proposal, but ill-prepared to determine where that places the proposal among those competing for funds within the same program.

(3) In some cases scientists from outside the NSF could be relied on to a greater extent than usual. For example, suppose a substitute NSF official has less than optimal technical competence or less than optimal sense of the competitive range in the affected program. Such a substitute might nonetheless be able to stand in if aided by an outsider who is more familiar with the scientific subfield or the affected program or both. The outsider might be a former NSF official, a panel member, a scientist from a sister agency, or in an unusual case, a special consultant.

(4) In any case involving a current member of the National Science Board, you must always require that any proposed award, additional funding for an award, or continuing grant increment be presented to the Board for its information before any final action is taken.

(d) *Consolidated handling of related cases.* If you anticipate a number of cases that will involve the same person and the same general circumstances, you may make a single determination and issue a single memo covering all of the cases. For example, you might issue a memo indicating that a rotator will be disqualified from handling any proposal or application from his or her home institution, and saying who will handle any such proposal or application instead. A copy of this memo should be placed in the file for each affected proposal or award.

[47 FR 32135, July 26, 1982, as amended at 48 FR 52732, Nov. 22, 1983]

§ 681.43 Potential conflicts when an NSF employee has an involvement or interest.

(a) When a prospective, current, or recent NSF employee has an involvement or interest in a pending proposal or other application, you should look for and deal appropriately with the five types of potential conflicts described in the rest of this section.

(b) *Recruiter's conflicts.* These are potential conflicts that could arise if an NSF official who is recruiting a prospective employee were simultaneously to handle a proposal or other application in which the prospective employee has an interest. You should identify those actively interested in recruiting the prospective employee and look for ways to limit their involvement in the handling of the proposal or other application. In particular:

(1) The person who would be the immediate supervisor of the prospective employee usually will have an especially active interest in successful recruiting. You should treat that interest as "normally disqualifying".

(2) Those directly involved in discussions with the prospective employee will also have an interest in successful recruiting. You should consider their possible conflicts.

(3) Officials at higher echelons who are not directly involved in the particular recruitment may still have an interest in successful recruiting within their organizations. You should consider their possible conflicts.

(c) *Superior's conflicts.* These are potential conflicts that could arise if an NSF official were to handle a proposal or other application in which one of the official's subordinates has an interest. In particular:

(1) The immediate supervisor of an employee usually will have an especially active interest in having the employee happy and in maintaining good relations with the employee. You should treat the immediate supervisor's interest as "normally disqualifying" if the interested employee is a prospective or current employee. You need not do so, however, in the case of a recent employee, for the supervisor's interest diminishes when the employment relationship ends.

(2) Persons at higher echelons might also be influenced by an interest in having the employee happy. You should consider whether their involvement in handling the proposal or application can or should be limited.

(d) *Subordinate's conflicts.* These are potential conflicts that could arise if an NSF official were to handle a proposal or other application in which the official's immediate superior or someone at a higher echelon in the official's "chain of command" has an interest. In particular:

(1) An NSF official would be placed in a particularly difficult position if asked to act on a proposal or other application in which the official's boss has an interest. Thus you should treat the immediate subordinate of a prospective or current employee as having a "normally disqualifying" relationship and only under the most special circumstances allow him or her to have any part in handling the proposal or application. You need not necessarily disqualify one who was the immediate subordinate of a recent employee, however, since the potential conflict would be substantially diminished once the supervisor-subordinate relationship ends.

(2) You may sometimes have to allow less immediate subordinates at lower echelons to play a role if there is not to be serious loss of technical competence and awareness of competitive range in the program affected. But you should take particular care in involving such lower-echelon subordinates. Disqualification would be preferable if it is workable. One possibility if disqualification is not workable may be to allow the official handling the proposal to stay anonymous, dealing with investigators and the grantee institution through another NSF official—perhaps a senior official or a grants officer. Other types of special handling that might be useful in such a case are described in § 681.42(c).

(e) *Professional associate's conflicts.* These are potential conflicts that could arise if an NSF official were to handle a proposal or other application in which a close professional associate at the NSF has an interest. In particular:

(1) You may have to consider disqualification of a very close associate of the interested employee, particularly where professional association may have led to personal friendship.

(2) When the degree of professional association and personal acquaintance involved is only what normally arises from service within the same organizational unit, little more than disclosure should normally be required.

(f) *Reviewer's conflicts.* These are potential conflicts that could arise when reviewers are asked to pass upon a proposal involving the interests of a scientist who will later be passing upon their proposals as an NSF program official. To avoid them:

(1) All files, active and inactive, that involve research or a research group with which the employee was or is associated should be sequestered to protect the anonymity of reviewers.

(2) To the extent possible you may want to provide more protection by selecting as peer reviewers persons who are not supported by any program for which the interested official is responsible.

§ 681.44 Handling prospective-employee determinations.

(a) You may be called upon to determine whether, when, and to what extent proposals or other applications that involve a prospective employee require special attention and special handling. You should be consulted as soon as a person becomes a prospective employee. The procedure for this is described in § 681.32.

(b) *Nature of possible conflicts.* Actual or potential conflicts of interests can arise in such a situation if any of those who would handle a proposal or other application either is trying to recruit the prospective employee or would be a subordinate, supervisor, or close colleague of the potential employee.

(c) *When you should take action.* If there is a significant possibility that such actual or potential conflicts could improperly influence decisions on proposals or other applications or awards, you must institute special handling as described in §§ 681.42 and 681.43. In the case of proposals and awards outside your own directorate or office, you should do that by notifying officials of the other directorate. A conflicts official of that directorate or office will determine what special handling may be necessary there.

(d) *Avoid premature action.* However, you should avoid unnecessarily early disclosure that a person is under consideration for an NSF position, for two reasons:

(1) That a person is considering a change of jobs is often confidential, particularly in earlier stages; and

(2) That an interested person is a prospective NSF employee cannot affect an official's judgment on a proposal or other application if the official has no knowledge of the prospective employment.

Since an official who works in one NSF organizational unit is less likely to know that a person is under consideration for employment in a different unit, and is also less likely to be influenced by any such knowledge, it normally makes sense to delay notifying officials outside the recruiting unit until it seems quite likely that the prospect will indeed become an NSF employee.

PART 682—REPRESENTATIONAL RESTRICTIONS AND INVOLVEMENT WITH PROPOSALS AND PROJECTS DURING AND AFTER NSF SERVICE

Subpart A—The Representational Restrictions Generally

Sec.

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Subpart B—Involvement With Proposals and NSF—Supported Projects During and After NSF Service

682.20 General; restricted representational activities vs. permitted research or educational activities.
682.21 Proposals and projects over which you had official responsibility or with which you were personally involved.
682.22 When you are or would be principal investigator.
682.23 Compensation or reimbursement of expenses from Federal awards.

AUTHORITY: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

SOURCE: 47 FR 32140, July 26, 1982, unless otherwise noted.

Subpart A—The Representational Restrictions Generally

§ 682.10 Summary; the four basic representational restrictions.

(a) NSF employees are subject to four basic restrictions on representing private parties (not the Government) in dealings with other Federal officials. The first of these applies while you are working for the Government. The other three apply for varying periods afterward; they are thus known collectively as the post-employment restrictions.

(1) *Current-employee restriction.* During your Federal employment you must not represent private parties in dealings with any federal official on any proposal, project, or other matter.

(2) *One-year NSF restriction.* For one year after you leave NSF employment you must not represent private parties in dealings with any NSF official on any proposal, project, or other matter.

(3) *"Official responsibility" two-year restriction.* For two years after you leave NSF employment you must not represent private parties in dealings with any Federal official on any proposal, project, or other matter involving specific parties if the same matter was active under your official responsibility during your last year at the NSF.

(4) *"Personal involvement" permanent restriction.* You must never represent private parties in dealings with any Federal official on any proposal, project, or other matter involving specific parties if you were personally involved with the same matter as an NSF employee.

All four restrictions have to do with representing private parties in dealings with NSF officials or other Federal officials. Here are the distinguishing features:

Current employee restriction	During Federal employment	Any Federal official	Any matter.
One-year NSF restriction	For one year after NSF employment.	Any NSF official	Any matter.

"Official responsibility" two-year restriction.	For two years after NSF employment.	Any Federal official	Any matter involving specific parties that was under your official responsibility.
"Personal involvement" permanent restriction.	Forever	Any Federal official	Any matter involving specific parties in which you were personally involved.

(b) *Examples.* The following examples illustrate the application of these rules.

Example 1: You have been on the Physics faculty at the University of Wyoming and have been principal investigator on grants from the NSF and from the Department of Defense. You come to the NSF for a two-year stint as a section head. While you are away a colleague acts as principal investigator on both your grants. During your stint at the NSF the Department of Defense grant is about to expire. The substitute principal investigator files a new proposal with DOD. She asks you to call the DOD program officer, with whom you have great credibility from past dealings, to vouch for her excellence and to urge that he continue to fund the Wyoming work. The current-employee restriction prohibits you from doing so.

Example 2: Same underlying facts as Example 1. After your stint at the NSF you return to Wyoming and want again to become principal investigator on the NSF-supported work. You may do so, but the one-year NSF restriction prohibits you from calling, writing, or visiting NSF officials to represent yourself or your institution on the award.

Example 3: Same facts as Examples 1 and 2. A few months after your return it comes time to file a new proposal for another NSF award so that you can continue the line of investigation you have been pursuing with the NSF support. You may prepare a proposal for your institution and may be listed as principal investigator, but the one-year NSF restriction prohibits you from calling, writing, or visiting NSF officials to represent yourself or your institution on the proposal.

Example 4: Same underlying facts as Example 1. During the last year of your tenure as section head another physics proposal came in from the University of Wyoming. Though the program officer who handled the peer review and submitted a recommendation was in your section, you disqualified yourself from any participation in handling the proposal. A three year continuing grant was awarded. *Within two years* after you return to Wyoming a problem comes up with the last increment of the continuing grant. You have meanwhile become department chairman. As department chairman you would normally confer with NSF officials about the problem and try to resolve it. The "official responsibility" two-year restriction prohibits you from doing so. If the problem came up more than two years after you left the NSF, however, you would be free to confer with NSF officials. The "official responsibility" two-year restriction would no longer apply, and the "personal involvement" permanent restriction would not apply because you had no personal involvement in handling the proposal while at the NSF.

Example 5: While you were Director of the Division of Grants and Contracts at the NSF you personally approved the terms of a contract to the Solar Equipment Company for development of solar heating equipment. Subsequently, responsibility for this contract was transferred to the Department of Energy. After you retire from your NSF position, you accept a position with the Solar Equipment Company. A problem comes up under the same contract, and you would normally be responsible for resolving it in discussions with DOE officials. The "personal involvement" permanent restriction prohibits you from doing so. That you would be dealing with DOE officials, not NSF officials, makes no difference: the restriction applies to dealings with any Federal official.

(c) *Proposals and projects.* Subpart B (§§ 682.20 through 682.23) is devoted entirely to the application of the representational restrictions in relation to proposals and projects. In relation to proposals and projects you may rely entirely on Subpart B.

(d) *Other matters.* For most current and former NSF employees the representational restrictions will rarely apply except in relation to proposals and projects. You are nonetheless responsible for making yourself familiar with the restrictions and abiding by them in relation to all covered matters.

(e) *Terms and effect.* The wording of the restrictions as presented in this section and § 682.20 has been simplified substantially from the wording of the underlying statutes, so that they will be easier to understand. In the process, they have also been deliberately overstated, with exceptions and "escape hatches" left out, so that your initial reaction will be to interpret them conservatively. The next three sections fill in critical concepts: what it means to have "official responsibility" or to be "personally involved" (§ 682.11); what is and is not representation subject to the restrictions (§ 682.12); and which are the matters on which representation is restricted (§ 682.13). In the process they explain the exceptions and refinements left out in this section.

(f) *Partners.* During your Federal service only, there is a further restriction that applies to any partner of a business or professional partnership to which you belong. If you belong to any such partnership, see § 682.14.

(g) *Source statutes and penalties for violation.* For the most part these restrictions derive from Federal criminal statutes and apply to officials of all Federal agencies. In one respect the NSF rules are stricter. At other agencies the one-year agency restriction applies only to former high-ranking officials; the one-year NSF restriction applies to all former NSF employees. Violation of the statutory provisions can lead to criminal prosecution (the penalties are a fine of up to $10,000 or imprisonment for up to two years of both) or to civil debarment from dealings with the NSF (for up to five years). A violation of the NSF's current-employee restriction can lead to disciplinary personnel action against an employee.

(h) *Consultation.* If in doubt about any of the rules in this part, consult an ethics counselor in the Office of the General Counsel. You are welcome to consult an ethics counselor for this purpose even after you leave the NSF.

§ 682.11 "Official responsibility"; "personally involved".

(a) The "official responsibility" two-year restriction applies only if you had official responsibility for the matter in question during your last year at the NSF. The "personal involvement" permanent restriction applies only if you were personally involved with the matter in question while at the NSF. This section elaborates the concepts of "official responsibility" and "personal involvement".

(b) *"Official responsibility".* You had "official responsibility" for a matter if you had direct authority to approve, disapprove, or otherwise direct Government actions regarding that matter, and it was actually pending during your tenure. It does not matter whether your authority was intermediate or final, whether it was exercisable alone or with others, or whether it was exercisable personally or through subordinates. Specifically:

(1) The scope of your "official responsibility" is ordinarily determined by the responsibilities of position you filled or the organization you headed.

(2) Any matter under consideration in the NSF is under the "official responsibility" of the Director and of each intermediate supervisor who has responsibility for any employee who actually participates in the matter within the scope of his or her duties.

Example: A proposal under consideration within a particular program is under the "official jurisdiction" of the program officer who actually handles it, of the program director for the program, of the responsible section head, of the responsible division director, of the responsible assistant director, and of the Director of the NSF. Whether it is under the "official responsibility" of any of their deputies depends on the responsibilities assigned to the deputies by their position descriptions, by any formal delegations to them, or by an other legally effective means.

(c) *"Personal involvement".* "Personally involved" is short for the following statutory language:

> "Participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise".

In other words:

(1) You may have "participated" and so have been "personally involved" even though you actually made none of the important decisions. You "participated" if you made recommendations, rendered advice, conducted an investigation, or otherwise contributed. Moreover, "approval" is specifically covered. Giving a required approval, however perfunctorily, is covered if the action could not have been taken over your objection.

(2) On the other hand, there is a distinction between personal involvement and official responsibility. If you could have intervened in the matter because of your position, but in fact did not, you were not "personally involved".

(3) You must have participated "personally". You participated personally if you gave directions or instructions about the matter to a subordinate who participated directly. If a subordinate participated without any direction or instruction from you about that particular matter, and you did not otherwise participate, you did not participate personally.

(4) You must have participated "substantially". That requires more than knowledge of what was going on, perfunctory involvement, or involvement on an administrative or peripheral issue. Your participation was "substantial" if it was significant to the outcome or would have seemed so to a reasonable outside observer, considering not only the effort you devoted to the matter but the influence of your effort on the outcome. A single act of a critical step, such as an approval, may be substantial. A series of time-consuming peripheral involvements, such as review solely for compliance with administrative or budgetary controls, may be insubstantial.

§ 682.12 Representation covered.

(a) *Representational dealings.* All four of the basic representational restrictions are restrictions on representing private parties in dealing with NSF officials or other Federal officials. The dealings covered are encompassing. They include any formal appearance before an official; any meeting with an official; and any letter, phone call, or other communication with an official.

(b) *Intent to influence and potential controversy required.* Contacts as a representative without intent to influence the officials contracted are not prohibited. Nor are contacts as a representative in connection with a routine request not involving a potential controversy. For example, you may ask a question about the status of a particular matter, as long as there is no implicit attempt to influence the outcome. You may request publicly available documents. You may communicate with an official to impart purely factual information as long as the communication has no connection with an adversary proceeding.

Example: While an NSF employee you helped write the current contract for the Kitt Peak National Observatory, with which you are now a staff scientist. You are asked to make a scientific presentation to NSF officials at the annual review of the Kitt Peak program. You may do so. You may not, however, participate in or support any appeal for more funds for Kitt Peak during the review. Indeed, it would be better for you to not be present at all when funding and other contractual subjects are discussed. If you were not a staff scientist at Kitt Peak, but only a user, that would not change things for this purpose.

(c) *Assisting without appearing or communicating with officials.* You are not prohibited from helping those who are representing a private party with Federal officials, as long as you do not yourself make an appearance or otherwise communicate with the officials. You may advise officials or representatives of the party, may make suggestions about whom they should contact and what they should say, and may even draft documents and letters, as long as you do not personally sign or transmit them. CAUTION: What is permitted under Federal law may be prohibited by rules of professional ethics, particularly if you are a lawyer.

(d) *Assisting by personal presence at an appearance or meeting.* A former high-ranking employee (SES, GS-17, or above) who had official responsibility for a matter or was personally involved while a Federal employee may violate the criminal statutes by being present to assist others at a meeting with Federal officials or an appearance before them, even though the former employee never speaks with the Federal officials. The NSF goes further and asks that (whether high-ranking or not) if you would be barred from directly representing anyone in connection with any matter, you refrain from being personally present while others are meeting with NSF officials. In rare cases where there are special circumstances the General Counsel or the Director may waive this restriction to the extent consistent with the Government-wide law and regulations.

(e) *Dealings with officials of the legislative branch not covered.* Where the basic representational restrictions refer to dealings with "Federal officials", that covers officials of a Federal Executive-branch or administrative agency and officials of Federal courts or administrative tribunals. It does not, however, encompass Members of Congress, their staffs, or other officials of the legislative branch.

(f) *Representing the United States.* During your Government service, you may naturally represent your office, the NSF, or the Government (or anyone else, for that matter) with other Federal officials if the representation is part of your official duties. After your Government service, moreover, you may represent an office or agency of the Government in dealings with officials of another office or agency any time you are asked to do so.

(g) *Representing yourself.* The "official responsibility" two-year restriction and the "personal involvement" permanent restriction do not apply if you represent only yourself. They would apply, however, if you were to represent yourself *and* another person, such as an institution or organization with which you are employed or affiliated. The current-employee representational restriction and the one-year NSF restriction *would* apply even if you were to represent only yourself. Even they, however, would not apply to:

(1) Any expression of your views on policy issues, where the circumstances make obvious that you are only speaking as an informed and interested citizen, not representing any financial or other interests of your own or of any other person or institution with whom you are associated;

(2) Any appearance or communication concerning matters of a personal and individual nature, such as your income taxes; your salary, benefits, or rights as a Federal employee; or the application of conflict-of-interests rules to something you propose to do; or

(3) Any appearance on your own behalf in any litigation or administrative proceeding.

They do apply, though, to contacts seeking grants or business, except for discussions about employment with an agency as a consultant or otherwise and to scientific or technical proposals, presentations, or communications. See § 682.20.

§ 682.13 "Matters" covered.

(a) *Matters involving specific parties.* The "official responsibility" two-year restriction an the "personal involvement" permanent restriction both cover only a "matter involving specific parties". Generally, such a matter is a specific proceeding affecting the legal rights of the parties to the proceeding or an isolatable transaction or related set of transactions between identifiable parties. A "party" may be either a person or an institution, and one such party other than the Government is enough.

(1) In the context of the NSF a "matter involving specific parties" will usually consist of a proposal or bid, the award-or-declination decision process with respect to it, any award that results, and any subsequent administrative action related to the project. Such "matters" are covered in Subpart B of this part.

(2) Otherwise, typical "matters involving specific parties" include other kinds of contracts or agreements; applications for permits, licenses, or the like; requests for rulings or similar official determinations; claims; investigations or audits; charges or accusations against individuals or firms; adjudicatory hearings; and court cases. These are relatively uncommon at the NSF, but when current or former NSF employees have been officially responsible for such matters or personally involved in them, the representational restrictions may apply. If in doubt consult an ethics counselor in the Office of the General Counsel.

(b) *Same or different matter.* The "official responsibility" two-year restriction and the "personal involvement" permanent restriction cover such a matter only if during your NSF service the *same* matter was under your official responsibility or you were personally involved in it. Except where guidance is provided in Subpart B of this part, you should not decide for yourself whether a "matter involving specific parties" is the same as one for which you had "official responsibility" or with which you were "personally involved" while at the NSF. Consult an ethics counselor in the Office of the General Counsel.

(c) *Other "matters".* The current-employee restriction and the one-year NSF restriction both cover matters that do *not* "involve specific parties" as well as those that do. Such broader "matters" include:

(1) Determinations to establish or disestablish a particular program or set its budget level for a particular fiscal year;

(2) Decisions to undertake or terminate a particular project;

(3) Decisions to open or not open a contract to competitive bidding;

(4) Decisions on particular NSF rules or formal policy, such as adoption or amendment of a resolution by the National Science Board, promulgation or amendment of an NSF regulation or circular, amendment of standard grant or contract terms, or changes to such NSF policy documents as *Grants for Scientific Research* and the *Grants Policy Manual;* and

(5) Agency positions on particular legislative or regulatory proposals.

On the other hand, the statutory term is really not just "matter", but "particular matter". The word "particular" is intended to exclude broad technical areas, policy issues, and conceptual work done before a program has become particularized into one or more specific projects. You should not, however, rely on this hazy distinction alone to take you out from under either of the representational restrictions that cover matters not involving specific parties without checking with an ethics counselor in the Office of the General Counsel.

(d) *Boundaries of matters not involving specific parties.* In connection with the current-employee restriction and the one-year NSF restriction, you need not consider whether a "matter" is the same as or separate from any other matter. Those two restrictions cover any "matter", whether or not you have previously had any responsibility for or involvement with it.

§ 682.14 Restriction on your partners.

While you are a Federal official no person who is legally your partner in a business or professional partnership may act as agent or attorney for anyone in dealings with any other Federal official on any matter under your official responsibility or with which you are or have been personally involved as a Federal official. A partner who violates this rule commits a Federal crime punishable by a fine of up to $5000 or imprisonment for up to one year or both. In general, your partners may safely steer clear of this restriction by using the definitions and guidance in the earlier sections of this Subpart A, treating "act as agent or attorney" as equivalent to "represent" (it may actually be slightly less encompassing). They may consult on this restriction with attorneys in the Office of the NSF General Counsel. If they prefer to consult other counsel, the counsel should be directed to 18 U.S.C. 207(g).

Subpart B—Involvement With Proposals and NSF-Supported Projects During and After NSF Service

§ 682.20 General; restricted representational activities vs. permitted research or educational activities.

(a) *Basic representational restrictions.* The same four representational restrictions described in Subpart A of this part apply to representational activities involving proposals or projects.

(1) *Current-employee restriction.* During your Federal employment you must not represent anyone (including yourself) in dealings with any Federal official on any proposal or project.

(2) *One-year NSF restriction.* For one year after you leave NSF employment you must not represent anyone (including yourself) in dealing with any NSF official on any proposal or project.

(3) *"Official responsibility" two-year restriction.* For two years after you leave NSF employment you must not

represent anyone else in dealing with any Federal official on any proposal or project if the same proposal or project was active under your official responsibility during your last year at the NSF.

(4) *"Personal involvement" permanent restriction.* You must never represent anyone else in dealings with any Federal official on any proposal or project if you were personally involved with the same proposal or project as an NSF employee.

(b) *Examples.* Examples 1 through 4 in § 682.10(b) illustrate the application of these restrictions.

(c) *General effect.* These representational restrictions do not preclude you from being involved as a researcher or educator with proposals submitted to the Government or projects supported by the Government. They do preclude you from negotiating with NSF officials or other Federal officials and from engaging in other representational activities intended to influence their decisions on certain proposals and projects.

(d) *Restricted representational dealings.* If you write, call, visit, or otherwise communicate with an official you have "dealt" with the official. Those dealings are representational if you try to influence the official to suggest, recommend, or approve:

(1) An award;

(2) An award amount, a budget, or particular budget items;

(3) Particular award terms or conditions;

(4) An award amendment, increase, or extension;

(5) An administrative approval; or

(6) Any other action affecting a proposal or project.

(e) *Permitted research and educational activities.* You do not engage in representational dealings, and so you violate none of the representational restrictions, by:

(1) Participating in research or other work supported under an award from the NSF or another Federal agency;

(2) Being listed as an investigator in a proposal or award;

(3) Preparing a proposal that will be submitted to the NSF or another Federal agency (but if you prepare it during your NSF tenure, you must do so entirely on your own time);

(4) Making a scientific or technical presentation to officials of the NSF or another Federal agency (at a site visit, for example) or otherwise communicating scientific or technical information to them on the work being proposed or conducted; or

(5) Communicating with officials of the NSF or another Federal agency, with no intent to influence them, to request routinely available and noncontroversial information, such as the status of the decision process on a proposal.

Be very careful with these last two activities particularly; it would be easy to fall into trying to influence actions of the officials involved. If you can, let someone else make the presentation or request. If in any doubt, consult an ethics counselor in the Office of the General Counsel.

(f) *Specifics on proposals.* You may prepare a proposal for submission to the NSF or another Federal agency even though you would be precluded by one of the three post-employment restrictions from any representational dealings with agency officials about it. You may sign the cover sheet to signify your agreement to assume responsibility for the scientific and technical direction of the project and for the preparation of required technical reports. You may not, however, sign the cover sheet as "authorized official" or sign any cover letter submitting the proposal for the institution. Nor may you call, write, or visit the agency program officer who is handling the proposal to urge an award, haggle over budgets, or the like. You may respond to requests from the program officer or another NSF official for scientific and technical information relating to the proposal, such as might be needed to respond to reviewer comments. You must not, however, couple the information you supply with any attempt to influence the decision on the proposal other than what inheres in the provision of the information itself. (If possible, have someone else respond.) At the NSF the proposal will receive special scrutiny and may require special handling to avoid conflict of interests, but you have no special responsibility in that connection.

(g) *Other issues related to representation.* Section 682.12 covers a number of other issues related to representation. Among these are assisting in representation without appearing or communicating with official (generally permitted); assisting by personal presence at an appearance or meeting (generally prohibited); representating the Government (generally permitted); and representing yourself along (depends). The rules and explanations given there apply to proposals or projects just as to other matters. If any confusion persists after you read them, consult an ethics counselor in the Office of the General Counsel.

§ 682.21 Proposals and projects over which you had official responsibility or with which you were personally involved.

(a) The "official responsibility" two-year restriction applies only if you had official responsibility for the proposal or project in question during your last year at the NSF. The "personal involvement" permanent restriction applies only if you were personally involved with the proposal or project while at the NSF. You will therefore need to know: (1) When a project is the same as one proposed or active while you were at the NSF, and (2) whether you had official responsibility for the project or were personally involved with it.

(b) *When is a project the same project?* All usual aspects of handling a particular proposal and any award based on it relate to the same "project". These include:

(1) The initial peer review and award-or-declination decision process;

(2) Review and approvals of an award recommendation;

(3) Negotiation of budget and award terms;

(4) Negotiation of award amendments;

(5) Consideration of continuing-grant increments; and

(6) Consideration of any extensions or administrative approvals.

(c) *Exceptions.* (1) A negotiation or determination on disposition of rights in any invention or publication that arises out of an award normally is a separate matter from the processing and monitoring of the award, but not from discussions or negotiations about disposition of rights that took place before the invention was made or the publication written.

(2) Separate task orders under a continuing order agreement or the like constitute separate "matters" if the tasks and the negotiations are actually separate.

(3) An ethics counselor may determine that other matters arising from a particular proposal or award constitute separate "matters" if the circumstances warrant.

(d) *Renewals.* An application that involves a continuation or outgrowth of work that the investigators have been doing under a previous NSF and award is part of the same "project" as the original proposal and project unless:

(1) A complete new proposal and a new budget are submitted;

(2) They are subjected to a complete new competitive peer review or evaluation; and

(3) The review or evaluation involves a new group of reviewers, a substantial fraction of whom did not review the earlier proposal.

(e) *"Official responsibility".* You had "official responsibility" for a proposal or project if you were personally responsible for handling it or if you headed a directorate, division, section, or program that was responsible for handling it. (The Director has "official responsibility" for every proposal or project active at the NSF during his or her tenure.) You will find further elaboration of "official responsibility" in § 682.12(b).

(f) *"Personal involvement".* You were "personally involved" with a proposal or project if you handled the peer review of the proposal; if you made any formal recommendation or decision on it, including any approval of an award recommendation or other action; if you reviewed the proposal or made a site visit; or if you otherwise made a substantial contribution to the handling of the proposal or project. You will find further elaboration of "personally involved" in § 682.12(c).

§ 682.22 When you are or would be principal investigator.

(a) *Retention of ties to research, etc. permitted.* Many scientists and educators interrupt active research and teaching careers to spend a year or two at the NSF as "rotators" and then return to research and teaching, usually at the same institution from which they came. Many such rotators (and a few permanent employees) who have been principal investigators under NSF awards before coming to the NSF, retain some interest or association with the work. If you have been the principal investigator under an NSF award, you are not precluded from retaining ties to the work under the award after you become an NSF employee. Subject to the restrictions on outside employment explained in Part 683 of the NSF conflict-of-interests regulations, you may stay in contact with those who are continuing the work in your laboratory or on your project. You may continue to supervise graduate students. And you may visit and work in the laboratory on your own time for these purposes.

(b) *Substitute principal investigator.* Before you come to the NSF, however, the NSF requires that you and your institution designate, subject to NSF approval, a substitute principal investigator—*i.e.*, another scientist who will be responsible for the work and equipment and will represent the project and the institution in any dealings with NSF officials while you are at the NSF.

(c) *Suspension of work on an NSF award.* Appointment of a substitute principal investigator is unnecessary if all work under an award is to be completely suspended while you are at the NSF. If the work is to be suspended, you and your institution should so inform the NSF by letter before your NSF employment begins. Work under the award may be resumed when you complete your NSF employment, and its term may be extended to account for the time lost during your NSF employment.

(d) *Substitute negotiator.* As soon as you leave the NSF, you may again be principal investigator on an NSF project, may be listed as principal investigator in any proposal or award, and may sign a proposal as principal investigator. However, the NSF asks that you and your institution formally designate (subject to NSF approval) a "substitute negotiator" who, though not principally responsible for the work, will represent the project and the institution in dealings with NSF officials from which you would be restricted. In the typical case, the one-year NSF restriction will require that a substitute negotiator continue to serve that function for one year after you leave the NSF. In the rarer case of a proposal or project for which you had official responsibility or with which you were personally involved, there should be a substitute negotiator for as long as the "official responsibility" two-year restriction or the "personal involvement" permanent restriction bar you from such representational dealings.

(e) *Renewal proposals submitted during your NSF service.* During your NSF service a proposal may be submitted for continuation or extension of work on which you were principal investigator before coming to the NSF and to which you intend to return. The role you will play in the work proposed should be clearly spelled out in the proposal, and the proposal should prominently indicate that you are currently an NSF employee. If work under a resulting award would begin before you leave the NSF, a substitute principal investigator must be named. If the work would not begin until after you leave the NSF, you may be named as principal investigator, but a substitute negotiator must be named.

(f) *Your involvement or interest in project to be open.* The appointment of a substitute principal investigator or a substitute negotiator is not intended to conceal or obscure your continued involvement or interest in the project. Just the opposite: your involvement or interest should be made unmistakably plain. This will ensure that any proposal or other award-related application will be given the special attention and special handling called for under Part 681.

(g) *Purposes of "substitute" requirements.* The appointment of a "substitute principal investigator" or "substitute negotiator" ensures against unthinking violation of the restrictions on dealings with NSF officials. It serves this purpose by flagging proposals or awards affected by the restrictions and by identifying someone else with whom NSF officials can properly discuss them or negotiate over them. Designation of a substitute principal investigator while you are at the NSF has two additional functions: It identifies another person to be responsible for the work and equipment, and it reminds all concerned that during your NSF service your primary attentions must be on your NSF duties.

(h) *Proposals and awards of other agencies.* The "substitute principal investigator" and "substitute negotiator" requirements described in this section are specific to the NSF. If you are or would be a principal investigator under a project proposed to or supported by another Federal agency, however, you should carefully observe the representational restrictions as they apply to dealings with officials of other Federal agencies. The current-employee restriction is particularly likely to apply.

§ 682.23 Compensation or reimbursement of expenses from Federal awards.

(a) *Compensation from NSF awards.* While you are an NSF employee, you may not receive any salary, consulting fee, honorarium, or other form of compensation for your services from an NSF award either directly or indirectly. In other words, you may not receive money for your services in connection with a project, a conference, or other work that was supported in whole or in part by funds provided from an NSF award. After you cease to be an NSF employee, you may again receive compensation from an NSF award.

(b) *Expenses from an NSF award.* While an NSF employee you may not receive any reimbursement of expenses from an NSF award. You may receive reimbursement of expenses from other Federal awards to the extent consistent with § 683.33.

[47 FR 32140, July 26, 1982; 47 FR 34151, Aug. 6, 1982; 47 FR 54081, Dec. 1, 1982]

PART 683—OTHER CONFLICTS RULES

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AUTHORITY: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

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Subpart A—Financial Disclosure

§ 683.10 Who must make general financial disclosure.

(a) If you are an executive level, SES, or supergrade employee, you are a "senior employee" and must file public Financial Disclosure Reports. See § 683.11.

(b) If you are not a "senior employee", but serve as either a program officer, a directorate administrative official, a grants and contracts officer, an auditor, or a lawyer, you must file confidential Statements of Employment and Financial Interests. See § 683.12.

(c) If you are in neither of these categories, no general financial disclosure is required of you. You may ignore the rest of this subpart.

(d) If you are required to file Financial Disclosure Reports or Statements of Employment and Financial Interests, the Foundation will supply you with the necessary forms. You may ask for them when you need them, but normally they will be sent to you automatically, with instructions.

§ 683.11 Financial disclosure requirements for senior employees.

(a) If you are a "senior employee" you must file an initial Financial Disclosure Report within 30 days after you first come to the Foundation or are promoted into a senior-employee position. You must thereafter file a Financial Disclosure Report by May 15 of each year. And you must file a termination Financial Disclosure Report within 30 days after you leave the Government.

(b) File your Reports with an ethics counselor. The ethics counselor will help with problems or questions that arise in completing the forms, and is required by law to review your Report after you file it. The ethics counselor may contact you about any errors you make in filling out the form or about questions that are raised by what you report.

(c) The law requires the NSF to make each Report you file available to the public within 15 days after you file it.

(d) Any person who wants to see or copy your Report must make a written request. A copy of any such request will be sent to you.

(e) If you are nominated by the President to an NSF position and must be confirmed by the Senate, your initial Report must be filed with the NSF within five days after your nomination.

(f) If you fail to file a required Report, fail to file information required to be reported, or file false information, you are subject to disciplinary action. If you do any of those things willfully, the law requires the Director of the Foundation to report to the Attorney General, who has authority to enforce the disclosure requirements against any knowing or willful violation by suits seeking civil penalties of up to $5,000.

§ 683.12 Financial disclosure requirements for program officers, grants and contracts officers, auditors, and lawyers.

(a) § 683.10(b) indicates that you are one of those who must file Statements of Employment and Financial Interests, you must file an initial Statement within 30 days after you are first appointed to a covered position either by promotion or as a new NSF employee. You must thereafter file a Statement each year by July 31.

(b) File your Statements with the Personnel Office.

(c) Your Statements will be held in the strictest confidence allowed by law. The Personnel Office will keep them in a locked file and will release them or allow disclosure of information from them only with your written approval or that of the General Counsel. Before any release or disclosure on the authority of the General Counsel you will be notified and will have an opportunity to comment, except when information is requested for an official investigation of a possible criminal violation.

(d) If you fail to file a required Statement, fail to file information required to be reported, or file false information, you are subject to disciplinary action.

Subpart B—Acts Affecting Financial Interests

§ 683.20 Acts affecting your financial interests.

(a) *No acting as a Federal employee where you have a financial interest.* You must not be personally involved as a Federal employee in handling of any proposal, award, or other matter in which you, a member of your immediate family, a business partner, or an organization of which you are or may become a part has a financial interest. BE CAREFUL: Violation of this rule may also result in a violation of a criminal statute for which the penalties are a fine of up to $10,000, imprisonment for up to two years, or both.

(b) *Proposals and awards.* You will not violate this restriction in handling proposals and awards as long as you abide by the requirements on handling proposals and awards described in Part 681 of these regulations.

(c) *Policy determinations.* Broad policy determinations that might affect your home institutions, but only in the same manner as all similar institutions, are not covered.

(d) *"Matter".* Otherwise, the term "matter" has the same meaning here as in connection with the representational restrictions described in Part 682 of this chapter. It is elaborated in § 682.13 of this chapter. Note that here specific parties need not be involved.

(e) *"Personally involved".* The term "personally involved" has exactly the same meaning here as in connection with the representational restrictions described in Part 682 of this chapter. It is elaborated in § 682.12(b) of this chapter. In general, you can be "personally involved" in the handling of a matter even though you actually make none of the critical decisions, if you contribute by recommendations, advice, approval, or the like, and your contribution is substantial.

(f) *Immediate family.* Only your spouse and minor children are considered members of your "immediate family" under this rule.

(g) *"Organization of which you are or may become a part".* You are a part of an organization if you are an officer, director, trustee, partner, or employee. You "may become" part of an organization if you are negotiating with it or have an arrangement with it concerning a position.

(h) *Waiver.* This provision may be waived where the interest is so insubstantial as to be unlikely to affect the integrity of your services to the Government. If you think such a waiver is called for, consult an ethics counselor in the Office of the General Counsel. The ethics counselor will advise you and will make a recommendation to the official who would have to approve such a waiver.

Subpart C—Outside Employment, Compensation, Income, Gifts, etc.

§ 683.30 Outside employment ("moonlighting") and income.

(a) *Permitted within limits; duty first.* While not on official duty, you may work for private firms or organizations either for pay or as a volunteer, within limits established by the rest of this subpart. Be sure that you understand all those limits before undertaking any such outside work. Those that do not relate to compensation apply whether or not you work for pay. A basic limit, of course, is that duty comes first. You should not engage in any outside activity that impairs your health, exhausts your energies, or otherwise prevents you from doing your NSF job.

(b) *Policymaking or administrative work for certain organizations.* You may not participate as a policymaking officer for any research or educational institution, any scientific society, or any professional association without the written approval of an ethics counselor. Whenever a major policy question is presented by a request for such approval, you or the ethics counselor may raise the matter with the General Counsel and, if appropriate, with the Director of the Foundation.

(c) *Visiting Committees.* Employees should not participate in the deliberations of a college or university visiting committee. However, an employee may meet with such groups as a Foundation official where it would be appropriate to attend a similar meeting with any other comparable group requesting his or her assistance.

[47 FR 32145, July 26, 1982, as amended at 51 FR 22939, June 24, 1986]

§ 683.31 Compensation.

(a) *Basic restrictions on outside compensation.* Three basic rules restrict compensation (not including reimbursement of expenses) you can accept from sources other than your Federal salary:

(1) *No extra compensation for official duties.* You must not seek or accept any contribution or supplement to your Government salary for doing any part of your NSF job.

(2) *No compensation out of any Federal award.* You must not seek or accept any compensation out of funds that come wholly or partly from a Federal award.

(3) *No compensation in connection with any matter involving the Government.* You must not seek or accept any compensation for services by you or anyone else in connection with any proposal, project, or other matter in which the United States is a party or has a direct interest.

BE CAREFUL: Breaking any of these rules would be a Federal crime.

(b) *Pensions and other employee benefits.* These rules do not preclude you from continuing to participate in a bona fide pension or other employee benefit plan maintained by a former employer.

(c) *Wording and terms.* The wording of these restrictions has been simplified here substantially from the wording of the underlying statutes, so that they will be easier to understand. Interpret them conservatively. If you have any doubt about the meaning of terms, consult an ethics counselor in the Office of the General Counsel.

§ 683.32 Honoraria.

(a) *Honoraria on official duty.* You must not accept any honoraria for speeches, papers, lectures, or the like delivered in the course of your official duties. However, if declining an honorarium would appear embarrassing or insulting to the offeror, particularly one from another country, you may accept the honorarium on behalf of the Foundation and deposit it into a special trust fund account or into the Treasury. Under no circumstances may you accept an honorarium for yourself for acts performed in your official capacity.

(b) *Honoraria—while not on official duty.* You may accept honoraria for speeches, papers, or lectures delivered while you are not on official duty, subject to general limits on outside employment described in § 683.30, general restrictions on receipt of compensation described in § 683.31, and prohibitions against misuse of inside information described in § 683.34. You will be disqualified for one year from handling proposals and other award-related applications that involve the interests of the person or institution from which you received any honorarium. See § 681.21 of this chapter. Moreover, the law restricts the amounts of honoraria you may accept:

(1) You must not accept an honorarium of more than $2,000 for any speech, paper, lecture, or the like (excluding reimbursements for meals, lodging, and travel).

(2) If you are a Presidential employee, honoraria count toward the fifteen-percent limit on your outside income. See § 683.30(d)(3).

§ 683.33 Reimbursements and services in kind.

(a) *For official travel.* You may not accept money from private sources to reimburse you for expenses incurred during travel on official NSF business, though private sources may reimburse the NSF for your expenses. You may accept meals, lodging, or travel tickets (not money) from private sources when you are traveling on official NSF business, but not if they would be paid for out of funds that come wholly or partly from an NSF award. There is one exception to the reservation about funds that come from an NSF award: if you are attending a conference, symposium, or other meeting funded by the NSF, you may accept meals and lodging (but NOT travel tickets) if they are offered to everyone attending the meeting and alternate arrangements for meals and lodging are unavailable or would cause an unusual inconvenience. If you do accept meals or lodging while on official travel, your per diem must be reduced accordingly.

(b) *For travel, etc. when not on duty.* If you are on leave, not representing the Foundation, and not expected primarily to discuss NSF policy or procedures, these restrictions do not apply. However, you may not accept services in kind or reimbursement for travel expenses if the sources would be funds that come wholly or partly from an NSF award EXCEPT as provided for rotators in § 682.23(c).

§ 683.34 Misuse of inside information or Government property.

(a) *No misuse of inside information.* If your Government job gives you access to information not generally available to the public, you must not use that information for your private benefit or make it available for the private benefit of any other person or institution.

(b) *Consulting, lecturing, etc. about the NSF.* You must not receive anything of monetary value for consulting, lecturing, writing, or public discussion that concerns the responsibilities, the programs, or the operations of the NSF or that draws on official information or ideas not generally available to the public.

(c) *Waivers.* The Director, the Deputy Director, or an assistant director may waive application of these rules and authorize use of non-public information in the public interest. Any such authorization must be in writing. Consult an ethics counselor in the Office of the General Counsel.

(d) *Private use of public property or services.* You must not use Government property or services for your private benefit or for the private benefit of others, except as your normal public duties benefit particular members of the public in intended ways.

§ 683.35 Participation in NSF-supported conferences and workshops.

You may participate in a conference, workshop, or similar event supported by NSF funds, provided you do not receive any compensation, honorarium, or the like for your participation. You may not serve as an organizer or director of such an NSF-supported event, unless its purpose is to plan, assess, or publicize NSF programs. Nor, ordinarily, should you chair a session or give a paper except to describe NSF programs or NSF needs. You may discuss arrangements with the organizers or directors as long as you do not use the influence that derives from your NSF position to pressure them.

§ 683.36 Gifts, favors, loans, prizes, and awards.

(a) *Gifts and favors generally.* You may not directly or indirectly solicit or accept a gift, a favor, or a loan from any person or organization that has or is seeking NSF awards, that has other interests potentially affected by what you do in your NSF job, or that may be trying to affect your official actions. (You may, however, accept promotional things of trivial value such as pens, pencils, note pads, and calendars.)

(b) *Meals or entertainment.* By extension, you should ordinarily avoid accepting meals or entertainment from such persons or organizations if you can avoid doing so within the reasonable bounds of politeness. You may, however, occasionally accept a modest meal offered as a courtesy or convenience during a site visit or a luncheon or dinner meeting.

(c) *Prizes and awards.* The restrictions in paragraph (a) of this section do not prevent you from accepting a prize or award for scientific or other public achievement given by a university, scientific society, or other organization. However, you may accept anything of value that accompanies the prize or award only if it is not paid for out of funds that come wholly or partly from an NSF award. You will be disqualified for one year from handling proposals and other award-related applications that involve the interests of the person or institution from which you received any such prize or award. See § 681.21 of this chapter.

(d) *From foreign governments.* You may not accept a gift or decoration from a foreign government except one of "minimal value". Minimal value means retail value in the United States of $140 or less. If the gift is of more than minimal value you may accept it only if not accepting it would be likely to cause offense or embarrassment. Even then, any gift of more than minimal value becomes the property of the United States. Consult an ethics counselor for help in depositing the gift with the State Department.

Subpart D—Political Activity (Hatch Act)

§ 683.40 Introduction; who's covered.

(a) *Hatch Act.* In order to ensure that day-to-day government actions (such as award of grants) are not affected by political motives and in order to preserve a nonpolitical civil service that is selected on merit, not on political considerations, the law restricts the involvement of Federal civil service employees with partisan politics. These restrictions derive from a law popularly known as "the Hatch Act".

(b) *Summary of Hatch Act restrictions.* (1) You may not run for public or party office, except in nonpartisan elections and certain local elections. See § 683.42(a).

(2) You may not participate in election campaigning, except in nonpartisan elections and certain local elections. See § 683.42(c).

(3) You may not take an active part in leading or managing a political party. See § 683.43.

(4) You must not use your official authority or influence for political purposes. See § 683.44.

(c) *Presidential appointees.* You are subject to these restrictions if you are an NSF employee, unless you are a Presidential appointee whose appointment was subject to Senate confirmation. If you are such a Presidential appointee, you are subject only to the restrictions decribed in § 683.44. You need not be concerned with the rest of this Subpart except as it affects your colleagues and subordinates.

(d) *Employee coverage.* If you are subject to the "Hatch Act" restrictions, they apply even while you are on leave while you are on detail or assignment to a non-Federal post. They apply even if you work for the Government only part-time. If you work for the Government as a temporary employee, the restrictions apply as long as your temporary employment lasts. If you work for the Government as an intermittent employee, the restrictions apply only while you are in the active-duty status, but that includes the entire 24 hours of any day on which you work for the Government at all. (If in doubt about the employment category to which you belong, check with Personnel.)

(e) *Political party.* Any political party or political club, national or state, is a "political party" under this Subpart, except where provisions specifically refer to a "national political party".

§ 683.41 Basic political rights unaffected.

The Hatch Act restrictions do not affect your basic political rights. Specifically:

(a) You may register and vote as you choose in any election.

(b) You may contribute to a political party or candidate, though you may not be pressured to do so because of your Federal employment.

(c) You may be a member of a political party or other political organization. You may attend party meetings and vote on issues. You may not, however, be involved in managing or leading the organization. See § 683.43.

(d) You may write, call, or visit any Federal, state, or local political official (including, for example, your Congressman) to express your views on any political issue and on how the official should vote or act on the issue.

(e) You may sign political petitions, including nominating petitions, but you may not circulate such petitions for others to sign. See § 683.42(d)(2).

§ 683.42 Candidacy and campaigns.

(a) *Running for office.* You may not run for nomination or election to public office. There are two exceptions:

(1) You may run in an election in which no candidate runs as representing any national political party. (Currently, this means the Democratic or Republican party, but if another party wins electoral votes in a Presidential election, that could change.)

(2) You may run for office in most of the local political jurisdictions in the Washington, DC area if you run as an independent not representing any political party, national or otherwise. (To be sure that your jurisdiction is among those in which this is permitted, check with an Ethics Counselor in the Office of the General Counsel.)

(b) *No partisan campaigning.* You may not campaign for or against a political party or candidate in an election for public office or in an election for party office. Essentially the same two exceptions apply:

(1) You may campaign for a candidate in an election in which no candidate runs as representing any national political party.

(2) If you could be an independent candidate in a local election described in paragraph (a)(2) of this section, you may campaign for an independent candidate in such an election.

You may not campaign for any side of a question or issue that is specifically identified with a political party.

(c) *What constitutes campaigning.* You "campaign" when you:

(1) Actively participate in management of a campaign;

(2) Initiate nominating petitions or canvass for signatures on nominating petitions;

(3) Endorse or oppose a candidate or a position through political advertisements, broadcasts, campaign literature, or the like;

(4) Speak at rallies, candidate nights, party caucuses, or other political gatherings;

(5) Solicit campaign contributions, promote political dinners or similar events, sell tickets for such events, or otherwise participate in campaign fundraising;

(6) Help to handle campaign finances;

(7) Distribute campaign material;

(8) Host a coffee, cocktail party, or buffet for a candidate or a candidate's surrogate;

(9) Drive voters to the polls;

(10) Work at the polls as a checker, challenger, pollwatcher, or the like, or

(11) Do any other work on behalf of a candidate.

(d) *Nonpartisan election duties.* In connection with an election, you may perform nonpartisan duties provided for by law as an election clerk, judge, or the like.

(e) *Appointment to nonelective office.* You may accept appointment to nonelective public office, subject to the same limits that apply to any other outside employment. See Subpart C, §§ 683.30 through 683.36.

§ 683.43 Party activities.

You may not take an active part in leading or managing a political party. You do that when you:

(a) Participate in organizing or reorganizing it;

(b) Serve as a party officer or as a member of a national, state, or local party committee (or stand as a candidate for such a position);

(c) Participate in party fundraising or in handling party finances;

(d) Serve as a delegate, alternate, or proxy to a party convention (though you may attend such a convention); or

(e) Take an active part in conducting or running a meeting, rally, fund-raising function, convention, or other party gathering (though you may attend such a gathering).

§ 683.44 Political use of official authority or influence.

You must not use your official authority or influence for political purposes. Thus:

(a) You must not use your official position or authority to interfere with an election or to affect the result of an election.

(b) You must not solicit political contributions from other Federal employees, allow your name to appear on any fundraising appeal likely to be sent to Federal employees, or authorize anyone to solicit or receive political contributions in a building where Federal employees work.

(c) You must not discriminate against any other employee because of his or her political opinions or affiliations. This is a "prohibited personnel practice". See regulations of the Merit Systems Protection Board at 5 CFR 1250.3(b)(3).

PART 684—RULES FOR CONSULTANTS, BOARD MEMBERS, AND OTHER "SPECIAL EMPLOYEES"

Subpart A—General Rules for Consultants, Board Members, and Other "Special Employees"

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Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

Source: 47 FR 32149, July 26, 1982, unless otherwise noted.

Subpart A—General Rules for Consultants, Board Members, and Other "Special Employees"

§ 684.10 "Special employees".

(a) *"Special employees"*. Any NSF consultant, National Science Board member, or other temporary or intermittent employee (including a rehired annuitant) who works or is expected to work for the NSF 130 days a year or less is a "special Government employee." The rules in this Subpart apply to you *only* if you are such a "special employee". Other employees should see Parts 680 through 683 of the NSF conflict-of-interests regulations.

(b) *Days worked.* If you have any uncertainty about how many days you work or are expected to work for the NSF, consult an ethics counselor in the Office of the General Counsel. There are specific rules for counting the days, and the rules that apply while you are still employed differ somewhat from those that apply afterward.

§ 684.11 Summary of rules for "special employees".

(a) This section summarizes the principal conflicts requirements that you are expected to observe as an NSF "special employee". It references the subsequent provisions of this subpart in which these requirements are elaborated. You are encouraged to read as well §§ 680.10 and 680.12, which introduce the NSF conflict-of-interests regulations and explain their purposes. Members of the National Science Board are committed to observe, besides the requirements summarized here, the special rules of the Board for its members. See Subpart B, §§ 684.20 through 684.22.

(b) *NSF work on proposals and awards of others.* (1) If you serve on a panel that reviews proposals or otherwise serve as a peer reviewer, you will be given instructions designed to deal with any conflict of interests you may have.

(2) If you participate in action on proposals and awards as a National Science Board member, see § 684.21.

(3) If you should otherwise become involved with the handling of a proposal of other award-related application you should follow the same rules and procedures on conflicts or potential conflicts in handling proposals and awards as regular NSF employees. They are set out in Part 681 of the NSF conflicts regulations, §§ 681.20 through 681.26.

(c) *Financial disclosure* (§ 684.12). (1) If you are compensated at a rate at or above the lowest rate for a GS-16 regular employee and plan to work or actually do work more than sixty days in any calendar year, you must file public Financial Disclosure Reports.

(2) If you are not required to file public Financial Disclosure Reports, you must file a confidential Statement of Financial Interests at the time of your appointment (or reappointment).

(3) You may ask for forms if you need them. Normally, however, they will be provided to you automatically, with instructions.

(d) *Political activity (Hatch Act)* (§ 684.13). The Hatch Act prohibits you from being involved in an election campaign or in political-party activity on any day when you work for the Government.

(e) *Representational restrictions and involvement with proposals and awards during and after NSF service* (§ 684.14). (1) You must never represent any private party in dealings with any Federal official on any proposal, project, or other matter if you have been personally involved with that matter at or for the NSF.

(2) If you have been employed with the NSF more than sixty days a year, you must not represent anyone in dealings with any NSF official during your NSF service and for one year thereafter on any proposal, project, or other matter involving specific parties.

General effect: These restrictions do not preclude you from preparing a proposal for your institution, from serving as principal investigator under an NSF proposal or award, from otherwise working under an NSF award, or from receiving compensation or expenses out of an NSF award. If you are a member of the National Science Board, however, see § 684.22.

(f) *Compensation* (§ 684.15). (1) While you are an NSF "special employee" you must not seek or accept (except from the Government) any compensation for services by you or anyone else in relation to any matter involving specific parties if you have been personally involved for the Government.

(2) If you have been employed with the NSF for more than sixty days in the last 365, you must not seek or accept (except from the Government) any compensation for services by you or anyone else in relation to any matter involving specific parties that is pending in the NSF.

(g) *Acts affecting your financial interests* (§ 684.16). You must not be personally involved as a Federal employee in the handling of any proposal, award, or other matter in which you, a member of your immediate family, a business partner, or an organization of which you are or may become a part has a financial interest. You will not violate this restriction with respect to proposals and awards as long as you follow the instructions provided in paragraph (b) of this section.

(h) *Use of inside information* (§ 684.17). If your work for the Government gives you access to information not generally available to the public, you must not use that information for your private benefit or make it available for the private benefit of any other person or organization.

(i) *Effect of simplified wording.* The wording of the requirements as presented in these regulations has been simplified substantially from the wording of underlying statutes and other authorities, so that they will be easier to understand. Your initial interpretation should be conservative. If in doubt on the meaning of terms or otherwise troubled, consult an ethics counselor in the Office of the General Counsel.

(j) *General standards of conduct.* You are also responsible for being familiar with general standards of conduct described in § 680.18 of this chapter and for observing them.

§ 684.12 Financial disclosure.

(a) Unless you are required under paragraph (b) of this section to file public Financial Disclosure Reports, you must file a confidential Statement of Employment and Financial Interests at the time of your appointment (and of any reappointment). The Personnel Office automatically supplies you with the necessary forms, and you file the Statement there.

(b) *High-ranking "special employees" who work more than sixty days a year.* If you are compensated as a "special employee" at a rate at or above the lowest rate for a GS-16 regular employee, you are a "senior employee". Regular senior employees are required to file public Financial Disclosure Reports. You are required to do so, however, only if you plan to work or actually do work more than sixty days in any calendar year. Specifically:

(1) If at the time of your appointment you are expected to serve more than sixty days in any calendar year, you must file such a Report then and again within thirty days after your appointment ends.

(2) If you did not file at the time of your appointment, but do in fact serve more than sixty days in any calendar year, you must file such a Report within fifteen days of your sixty-first day of work and again within thirty days after your appointment ends.

(3) In either case, if you in fact serve more than sixty days in any calendar year, you must also file such a Report before May 15 of the next year.

A person who is under consideration for nomination to the National Science Board may be asked to file a Financial Disclosure Report with the White House or the Senate through the Office of Government Ethics as part of the clearance process even if not expected to serve more than sixty days a year. Such a Report will not be made public by the NSF.

(c) *Filing of Financial Disclosure Reports.* If you are required to file Financial Disclosure Reports, the necessary forms ordinarily will be sent to you automatically, with instructions. You should inquire, however, if you think you may go over the sixty-day limit, and you may ask for forms from the Office of the General Counsel whenever you need them. File your Reports with an ethics counselor in the Office of the General Counsel. The ethics counselors will help with problems or questions that arise in completing the forms. The law also requires them to review your Report after you file it. They may contact you about any errors you make in filling out the form and about any questions that are raised by what you report. The law requires them to make each Report you file available to the public within fifteen days after receiving it. A copy of any request for your Report will be sent to you.

§ 684.13 Political activity (Hatch Act).

The Hatch Act and other laws restrict the involvement of Federal civil service employees with partisan politics. The restrictions apply to you for all of any day during which you work for the Government. If you have any plan or intention of being involved in any election campaign or political-party activity on any such day, consult an ethics counselor in the Office of the General Counsel before doing so. Members of the National Science Board, as Presidential appointees, are not subject to these rules. They are subject only to a restriction on using official authority or influence for political purposes. Part 683, Subpart D, §§ 683.40 through 683.44, cover the Hatch Act restrictions in greater detail.

§ 684.14 Representing private interests before the NSF or other Federal agencies.

(a) *"Personal involvement" permanent restriction.* All NSF "special employees" are subject to the following basic restriction:

> You must never represent anyone in dealings with any Federal official on any proposal, project, or other matter involving specific parties if you have been personally involved with that matter at or for the NSF.

(b) *NSF restriction.* If you have been employed with the NSF more than sixty days a year, you are subject to one other restriction:

> During your NSF service and for one year thereafter you must not represent anyone in dealings with any NSF official on any proposal, project, or other matter involving specific parties.

Be careful: Violation of either of these restrictions may also be a Federal crime.

(c) *Effect on involvement with proposals and projects.* These representational restrictions do not preclude you from being involved as a researcher or educator with proposals submitted to the NSF or other Government agencies or with projects supported by the NSF or by other Government agencies. They may preclude you from being the one to write, call, visit, or otherwise communicate with a Federal official about a proposal or project.

(d) *"Personally involved".* You can be "personally involved" even though you actually make none of the critical decisions if you contribute to them by recommendations, advice, approval, or the like, but your involvement must have been substantial. If you are a member of the National Science Board, you have definitely been "personally involved" with a matter if you have participated in any Board or Board-committee action on the matter or have taken part in a Board or committee discussion immediately preceding such an action.

§ 684.15 Compensation.

(a) *Compensation where you have been involved for the Government.* All "special Government employees" are subject to the following restriction:

> While you are an NSF "special employee" you must not seek or accept (except from the Government) any compensation for services by you or anyone else in relation to any matter involving specific parties if you have been personally involved with that matter for the Government.

(b) *Compensation in relation to NSF matters.* If you have been employed with the NSF for more than sixty days in the last 365 and still are, you are subject to one other restriction:

> You must not seek or accept any compensation for services by you or anyone else in relation to any matter involving specific parties that is pending in the NSF.

Be careful: Violation of either of these rules may also be a Federal crime.

(c) *NSF awards.* You may, however, perform work under an NSF award and may receive compensation charged to the award for the work.

(d) *"Personally involved".* The term "personally involved" has exactly the same meaning here as in connection with the representational restrictions described in § 684.14. See § 684.14(d).

§ 684.16 Acts affecting your financial interests.

(a) *No acting as a Federal employee where you have a financial interest.* You must not be personally involved as a Federal employee in the handling of any proposal, award, or other matter in which you, a member of your immediate family, or an organization of which you are or may become a part has a financial interest. BE CAREFUL: violation of this rule may also be a Federal crime.

(b) *Proposals and awards.* You will not violate this restriction with respect to proposals and awards as long as you follow the instructions provided in § 684.11(b).

(c) *"Personally involved".* The term "personally involved" has exactly the same meaning here as in connection with the representational restrictions described in § 684.14. See § 684.14(d).

(d) *"Matter".* The word "matter" has a somewhat broader meaning here than the phrase "matter involving specific parties" used in § 684.14. Broad policy determinations that might affect your home institution, but only in the same manner as all similar institutions, are not covered. If in doubt, consult an ethics counselor in the Office of the General Counsel. National Science Board members should consult the Chairman of the Board.

(e) *Immediate family.* Only your spouse and minor children are considered members of your "immediate family" under this rule.

(f) *"Organization of which you are or may become a part".* You are a part of an organization if you are an officer, director, trustee, partner, or employee. You "may become" a part of an organization if you are negotiating with it or have an arrangement with it concerning such a position.

(g) *Waiver.* This provision may be waived where the financial interest involved is so insubstantial that it is unlikely to affect the integrity of your services to the Government. If you think such a waiver is called for, consult an ethics counselor in the Office of the General Counsel. The ethics counselor will advise you and will make a recommendation to the official who would have to approve such a waiver. National Science Board members should consult with the Chairman of the Board.

§ 684.17 Inside information.

(a) If your Government job gives you access to information not generally available to the public, you must not use that information for your private benefit or make it available for the private benefit of any other person or organization.

(b) You must not receive anything of monetary value for consulting, lecturing, writing, or public discussion that primarily concerns the responsibilities, programs, or operations of the Foundation or that draws significantly on official information or ideas not generally available to the public.

(c) The Director, the Deputy Director, an assistant director, or (in the case of Board members) the Chairman of the National Science Board may waive application of these rules and authorize use of non-public information in the public interest. Any such authorization must be obtained in writing. Consult an ethics counselor in the Office of the General Counsel. National Science Board members should consult with the Chairman.

§ 684.18 General standards of conduct for "special employees".

(a) *Use of Government employment for private gain.* You must not use your Government employment for a purpose that is (or gives the appearance of being) motivated by desire for private gain for yourself or anyone else, particularly anyone with whom you have family, business, or financial ties.

(b) *Use of Government employment for extortion.* You must not use your Government employment to coerce (or appear to coerce) anyone to provide financial benefit to yourself of anyone else, particularly anyone with whom you have family, business, or financial ties.

(c) *Gifts and favors.* On days when you are working at or for the NSF or in connection with NSF employment you must not seek or accept from anyone who has business with the NSF any gift, tip, loan, entertainment, or favor for yourself or anyone else, particularly anyone with whom you have family, business, or financial ties. This does not include promotional items of trivial value or a modest meal offered as a courtesy when there is no apparent connection with NSF business.

(d) *Misuse of Government property.* You must not use Government property or services for your private benefit or for the private benefit of others, except as your public duties benefit particular members of the public in intended ways.

(e) *Familiarity with statutory provisions.* You are legally responsible for acquainting yourself with each statute that relates to your ethical and other conduct as an NSF and Federal employee. Principal among these are the criminal statutes relating to bribery, graft, and conflicts of interests contained in 18 U.S.C. 201 through 209. The aspects of those statutory provisions that apply to you as an NSF "special employee" are covered by these regulations. These regulations also cover the provisions of Executive Order 11222, which prescribes standards of ethical conduct for Government officers and employees, and regulations of the Office of Personnel and Management that implement both the statutory provisions and the Executive Order. If you follow the regulations, you should have no trouble with any of those provisions. The regulations do not cover a number of other statutes that you must obey as a Federal employee:

(1) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(2) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(3) The prohibitions against disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and disclosure of confidential information (18 U.S.C. 1905).

(4) The provision on habitual use of intoxicants to excess (5 U.S.C. 7352).

(5) The prohibition against misuse of a Government vehicle (31 U.S.C. 638a(c)).

(6) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(7) The prohibition against use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(8) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(9) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(10) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(11) The prohibitions against embezzlement of Government money or property (18 U.S.C. 641), failing to account for public money (18 U.S.C. 643), and embezzlement of the money or property of an employee by reason of his employment (18 U.S.C. 654).

(12) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(13) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart B—Special Rules of the National Science Board for Board Members

§ 684.20 Summary.

As a member of the National Science Board you are covered by rules for "special employees" described in Subpart A of this Part 684. In addition, Board deliberations raise a number of conflicts issues in a unique context. Moreover, Board members are highly visible Presidential appointees who retain private employment and other affiliations. Specifically, many of them are active scientists whose work has been supported by the NSF or other Federal agencies. For these reasons the Board has adopted the following specific conflict-of-interests rules for the governance of its members. You should also advise the Chairman of the Board of any interest or affiliation you have or propose to have that could create a significant appearance of conflict of interests in the work of the Board.

§ 684.21 Participation in Board deliberations.

(a) *Abstention.* You must excuse yourself from deliberations and votes of the Board or any of its committees on any action that would to your knowledge affect:

(1) The interests of an institution with which you, your spouse, a minor child, a blood relative who lives with you, or anyone who is legally your partner has any of the affiliations listed in paragraph (b) of this section, or

(2) The interests of an individual with whom you, your spouse, a minor child, a blood relative who lives with you, or anyone who is legally your partner has any of the relationships listed in paragraph (c) of this action.

(b) *Affiliations with affected institutions.* (1) Ownership of the institution's stocks, bonds, notes, or other evidences of debt (other than through mutual funds).

NOTE: Minor or indirect holdings may be exempted; check with the Chairman.

(2) Current employment.

(3) Any formal or informal arrangement for future employment.

(4) Current appointment as professor, adjunct professor, visiting professor, or the like.

(5) Governing board membership.

(6) Chairmanship of any committee of the institution that has an interest in the Board's action.

(7) Any other office (not including ordinary membership in a professional society or association).

(8) Current membership on a visiting committee or similar body.

NOTE: Individual waivers of this provision may be issued in appropriate circumstances; contact the Chairman.

(9) Current enrollment as a student in a department or school that has an interest in the Board's action.

(10) Any other affiliation with the institution that you think would destroy your objectivity or be seen as doing so by a reasonable person familiar with the affiliation.

(c) *Relationships with affected individuals.* (1) Blood or marriage relationship with a principal investigator.

(2) Any other relationship, such as close personal friendship, that you think might tend to destroy your objectivity or be seen as doing so by a reasonable person familiar with the relationship.

§ 684.22 Negotiations with NSF staff.

During your term on the National Science Board you must not represent yourself or any other private party in negotiations or other dealings with an NSF official on any proposal, project, or other matter.

[48 FR 52732, Nov. 22, 1983]

§ 684.23 Participation in proposals and projects.

(a) *General; substitute negotiator.* You may prepare a proposal for submission to the NSF and may be principal investigator on the proposal and on any subsequent award. The proposal should also name a substitute negotiator to represent the project and the institution in dealings with NSF officials from which you would be restricted as a member of the Board. If you were principal investigator under an existing award before your appointment to the Board, your institution will be asked to name a substitute negotiator for the same purpose before the appointment becomes official.

(b) *Scientific and technical information.* You may respond to requests from a program officer or another NSF official for scientific and technical information relating to an award or proposal, such as might be needed to respond to reviewer comments. You must not, however, couple the information you supply with any attempt to influence action on the proposal other than what inheres in the provision of the information itself. (If possible, have someone else respond.)

(c) *Compensation; reimbursement of expenses.* No NSF award made while you are a member of the Board may be charged for any compensation paid to you. An award may be charged, however, for actual expenses you incur in doing work supported by the award. If you are already an investigator or consultant under an NSF award when you became a Board member, the award may be charged for compensation to you to the extent established before your nomination.

[48 FR 52732, Nov. 22, 1983]

PART 689—MISCONDUCT IN SCIENCE AND ENGINEERING RESEARCH

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689.3 Role of awardee institutions.
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AUTHORITY: Sec. 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

SOURCE: 52 FR 24468, July 1, 1987, unless otherwise noted.

§ 689.1 General policies and responsibilities.

(a) "Misconduct" means (1) fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from research; (2) material failure to comply with Federal requirements for protection of researchers, human subjects, or the public or for ensuring the welfare of laboratory animals; or (3) failure to meet other material legal requirements governing research.

(b) The NSF will take appropriate action against individuals or institutions upon a determination that misconduct has occurred under an NSF award. It may also take interim action during an investigation. Possible actions are described in § 689.2.

(c) NSF will find misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An "inquiry" consists of information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation. An "investigation" is a formal examination and evaluation of relevant facts to determine whether misconduct has taken place or, if misconduct has already been confirmed, to assess its extent and consequences or determine appropriate NSF action.

(d) Before NSF makes any final finding of misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating the same allegation of misconduct.

(e) Debarment, suspension, or termination of an award for misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations. Nothing in these regulations shall preclude integrated and concurrent procedures under these regulations and the debarment and suspension regulations.

(f) The Division of Adult and Oversight (DAO) in the Office of Budget, Audit, and Control, oversees and coordinates NSF activities related to misconduct, conducts any NSF inquiries and investigations into suspected or alleged misconduct, and except where otherwise provided, speaks and acts for NSF with affected individuals and institutions. The Office of the General

Counsel (OGC) advises DAO and represents NSF on any current or potential criminal prosecution, current or potential litigation, or significant legal questions that arise.

§ 689.2 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) *Group I Actions.* (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual, department, or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) *Group II Actions.* (i) Restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(3) *Group III Actions.* (i) Immediately suspend or terminate an active award under appropriate NSF regulations.

(ii) Debar or suspend an individual, department, or institution from participation in NSF programs for a specified period after further proceedings under applicable regulations.

(iii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(b) In deciding what actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) Whether it was deliberate or merely careless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it is relevant only to certain funding requests or awards or to all requests or awards involving an institution or individual found guilty of misconduct.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Totally or partially suspending eligibility for NSF awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending use of individuals as NSF reviewers, advisors, or consultants.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.3 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged misconduct;

(2) Conduct a subsequent investigation, if warranted; and

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities.

(b) If an institution wishes NSF to defer independent inquiry or investigation, NSF expects it to:

(1) Inform NSF immediately if an initial inquiry supports a formal investigation.

(2) Keep NSF informed during such an investigation.

(3) Notify NSF even before deciding to initiate an investigation or as required during an investigation (i) if the seriousness of apparent misconduct warrants; (ii) if immediate health hazards are involved; (iii) if NSF's resources, reputation, or other interests need protecting; (iv) if Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or (v) if the scientific community or the public should be informed.

(4) Provide NSF with the final report from any investigation.

(c) If an institution wishes NSF to defer independent inquiry or investigation, it should complete any inquiry and decide whether an investigation is warranted within 90 days. It should similarly complete any investigation and reach a disposition within 180 days. If completion of an inquiry or investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to misconduct, which should indicate when NSF must or should be notified.

§ 689.4 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform DAO or refer informants to DAO.

(b) To the extent possible the identity of informants who wish to remain anonymous will be kept confidential. To the extent allowed by law, documents and files maintained by NSF during the course of an inquiry or investigation of misconduct will be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(c) If alleged misconduct may involve a crime, DAO will promptly consult with OGC, which will determine whether any criminal investigation is already pending or projected. If not, OGC and DAO will determine whether the matter should be referred to the Department of Justice.

(d) Otherwise DAO may:

(1) Inform the awardee institution of the alleged misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency;

(3) At any time proceed with its own inquiry.

(e) If DAO proceeds with its own inquiry it will normally complete the inquiry no more than 60 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, DAO will decide whether a formal NSF investigation is warranted.

§ 689.5 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, DAO may defer any NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, DAO will ordinarily proceed with its own investigation.

(b) If DAO decides to initiate an NSF investigation, it must give prompt written notice to the individuals or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active considerationby these agencies or the NSF, OGC will advise DAO what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation *may* include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratories, laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies;

(6) Opportunity for the subject of the investigation to be heard; and

(7) Full adjudicatory hearings or other formal proceedings, as described in appropriate regulations.

(e) NSF may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) DAO will make every reasonable effort to complete an NSF investigation and to report within 120 days after initiating it. If DAO cannot report within 120 days, it should submit to the Deputy Director within 90 days an interim report and an estimated schedule for completion of the final report.

§ 689.6 Pending proposals and awards.

(a) Upon learning of alleged misconduct DAO will identify potentially implicated awards or proposals and, when appropriate, will ensure that program and DGC officials handling them are informed (subject to § 689.5(c)).

(b) Neither a suspicion or allegation of misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will *not* be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Assistant Director may, in consultation with DAO, either defer review or inform reviewers of the status of the matter.

§ 689.7 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.2(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged misconduct. Such an order will normally be issued on recommendation from DAO and in consultation with DGC, OGC, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation and modified as warranted. An interested party may request a review and modification of any interim action.

(c) The Deputy Director will make and DAO will retain a record of interim actions taken and the reasons for taking them.

(d) Interim administrative actions are not final agency actions subject to appeal.

§ 689.8 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency DAO will assess the accuracy and completeness of the report and whether the investigating entity followed usual and reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct and the Deputy Director concurs,

(1) DAO will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct, (1) Except in unusual circumstances, the investigation report will be provided by DAO to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(2) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, DAO will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.2 lists possible final actions and considerations to be used in determining them.

(d) The Deputy Director will review the investigative report and DAO's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within thirty days after receiving DAO's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal.

§ 689.9 Appeals.

(a) In case of debarment, suspension, or termination of an award for misconduct, the appeals provided for in NSF regulations will be available. In all other cases, an affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Dirctor's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation. Findings from completed investigations may be shared with scientific review groups if the information bears directly on an investigator's scientific integrity or if necessary to provide an accurate account of relevant facts.

CHAPTER VII—COMMISSION ON CIVIL RIGHTS

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PART 701—ORGANIZATION AND FUNCTIONS OF THE COMMISSION

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AUTHORITY: Secs. 2-8, 97 Stat. 1301-1307 (42 U.S.C. 1975-1975f).

SOURCE: 50 FR 16261, Apr. 25, 1985, unless otherwise noted.

Subpart A—Organizations and Functions

§ 701.1 Establishment.

The United States Commission on Civil Rights (hereinafter referred to as the "Commission") is a bipartisan agency of the executive branch of the Government. The predecessor agency to the present Commission was established by the Civil Rights Act of 1957, 71 Stat. 634. This Act was amended by the Civil Rights Act of 1960, 74 Stat. 86; the Civil Rights Act of 1964, 78 Stat. 241; by 81 Stat. 582 (1967); by 84 Stat. 1356 (1970); by 86 Stat. 813 (1972); and by the Civil Rights Act of 1978, 92 Stat. 1067. The present Commission was established by the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301. The statutes are codified in 42 U.S.C. 1975 through 1975f. (Hereinafter, the 1983 Act will be referred to as "the Act.")

§ 701.2 Responsibilities.

(a) The Commission's authority under section 5 of the Act may be summarized as follows:

(1) To investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, handicap, or national origin;

(2) To study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national origin or in the administration of justice;

(3) To appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(4) To serve as a national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;

(5) To investigate sworn allegations that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(6) To appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are of eastern and southern European ethnic groups and report its findings to the Congress.

(b) Under section 5(c) of the Act, the Commission is required to submit reports to the President and to the Congress at such times as the Commission, the Congress or the President shall deem desirable.

(c) In fulfilling these responsibilities the Commission is authorized by the Act to hold hearings and to issue subpenas for the production of documents and the attendance of witnesses; to consult with governors, attorneys general, other representatives of State and local governments, and private organizations; and is required to establish an advisory committee in each State. The Act also provides that all Federal agencies shall cooperate fully with the Commission so that it may effectively carry out its functions and duties.

Subpart B—Organization Statement

§ 701.10 Membership of the Commission.

(a) The Commission is composed of eight members, not more than four of whom may be of the same political party. Four members are appointed by the President: Two members are appointed by the President pro tempore of the Senate and two members are appointed by the Speaker of the House of Representatives.

(b) The Chairman and Vice Chairman of the Commission are designated by the President with the concurrence of a majority of the Commission's members. The Vice Chairman acts as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(c) No vacancy in the Commission affects its powers and any vacancy is filled in the same manner and is subject to the same limitations with respect to party affiliations as previous appointments.

(d) Five members of the Commission constitute a quorum.

§ 701.11 Commission meetings—duties of the Chairman.

(a) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.

(b) In addition to the regularly scheduled meetings, it is the responsibility of the Chairman to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; *provided however,* that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairman.

(c) The Chairman, after consulting with the Staff Director, shall establish the agenda for each meeting; *provided however,* that at the meeting of the Commission such agenda may be modified by the addition or deletion of specific items pursuant to the motion of a member and a favorable vote by a majority of the members.

(d) In the event that after consultation with the members of the Commission and consideration of the views of the members, the Chairman determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairman may cancel such meeting.

§ 701.12 Staff Director.

A Staff Director for the Commission is appointed by the President with the concurrence of a majority of the Commissioners. The Staff Director is the Chief Executive Officer of the agency.

§ 701.13 Staff organization and functions.

The Commission staff organization and function are as follows:

(a) *Office of the Staff Director.* Under the direction of the Staff Director, this Office defines and disseminates to staff, policies established by the Commissioners; develops program plans for presentation to the Commissioners; evaluates program results; supervises and coordinates the work of other agency offices; manages the administrative affairs of the agency and conducts agency liaison with the Executive Office of the President, the Congress and other Federal agencies.

(b) *Office of the Deputy Staff Director.* Under the direction of the Deputy Staff Director, this Office is responsible for the day-to-day administration of the agency; evaluation of quantity and quality of program efforts; personnel administration and the supervision of Office Directors who do not report directly to the Staff Director. Units reporting directly to the Office of Deputy Staff Director are:

(1) *Equal Employment Opportunity Unit.* Under the direction of the Equal Employment Opportunity Officer, this Unit is responsible for the conduct of the agency's inhouse Equal Employment Opportunity Program.

(2) *Solicitor's Office.* Under the direction of the Solicitor, this Office is responsible for administrative law matters, including contracts, openness in government and government ethics, and the legal aspects of personnel, and labor relations issues.

(3) *Planning and Coordination Unit.* Under its Director, this unit is responsible for: coordinating the presenta-

tion of project proposals and coordinating the assignment of resources to approved projects: developing goals and priorities for projects and evaluating their implementation and coordinating periodic program reports.

(c) *Office of the General Counsel.* Under the direction of the General Counsel, who reports directly to the Staff Director, this Office serves as legal counsel to the Commissioners and to the agency; plans and conducts hearings and consultations for the Commission; conducts legal studies; prepares reports of legal studies and hearings; drafts or review proposals for legislative and executive action and reviews all agency publications and congressional testimony for legal sufficiency.

(d) *Office of Program and Policy.* Under the direction of an Assistant Staff Director, who reports directly to the Staff Director, this Office is responsible for the development of concepts for programs, projects and policies directed toward the achievement of Commission goals; program management and the preparation of the publication *New Perspectives.*

(e) *Office of Management.* Under the direction of an Assistant Staff Director, this Office is responsible for all administrative, management and facilitative services necessary for the efficient operation of the agency, including financial management, personnel, publications and the National Clearing House Library.

(f) *Office of Federal Civil Rights Evaluation.* Under the direction of an Assistant Staff Director, this Office is responsible for: monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; preparing documents which articulate the Commission's views and concerns regarding Federal civil rights to Federal agencies having appropriate jurisdiction.

(g) *Office of Research.* Under the direction of an Assistant Staff Director, this Office is responsible for: conducting or stimulating studies to advance basic knowledge of the extent, causes and consequences of civil rights denials; preparing monographs dealing with subjects which are current national civil rights issues; monitoring, planning and conducting consultations on the civil rights implications of Federal programs and policies and current civil rights issues.

(h) *Office of Congressional and Public Affairs.* Under the direction of an Assistant Staff Director, this Office is responsible for liaison with the news media and the preparation of periodical publications on civil rights issues; liaison with committees and members of Congress, monitoring legislative activities relating to civil rights and preparing testimony for presentation before committees of Congress when such testimony has been requested by a committee; planning and managing conferences at which the Commission receives information regarding civil rights issues; establishing and maintaining liaison with government and private civil rights agencies; representing the Commission at government and private organization conferences and conventions; managing the Commissions consumer affairs program.

(i) *Office of Regional Programs.* Under the direction of an Assistant Staff Director, this Office is responsible for: Directing and coordinating the programs and work of the regional offices and State Advisory Committees to the Commission on Civil Rights and maintaining liaison between the regional offices and the various headquarters offices of the Commission.

(j) *Regional Offices.* The addresses of the Regional Offices of the Commission and the States which they serve are:

Region I: New England Regional Office, 55 Summer Street, Eighth Floor, Boston, Massachusetts 02110, (617) 223-4671
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

Region II: Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, NY 10278, (212) 264-0400
New Jersey and New York

Region III: Mid-Atlantic Regional Office, 2120 L Street NW., Room 510, Washington, DC 20037, (202) 254-67177
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

Region IV: Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue NE., Room 362, Atlanta, Georgia 30303, (404) 221-4391

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

Region V: Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7371

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin

Region VI: Southwestern Regional Office, Heritage Plaza, 418 South Main, First Floor, San Antonio, Texas 78204, (512) 229-5570

Arkansas, Louisiana, Oklahoma, Texas, and New Mexico

Region VII: Central States Regional Office, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106, (816) 374-5253

Iowa, Kansas, Missouri, and Nebraska

Region VIII: Rocky Mountain Regional Office, The Executive Tower Building, 1405 Curtis Street, Suite 2950, Denver, Colorado 80202, (303) 844-2211

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

Region IX: Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688-3437

Arizona, California, Hawaii, and Nevada

Region X: Northwestern Regional Office, 915 Second Avenue, Room 2854, Seattle, Washington 98174, (206) 442-1246

Alaska, Idaho, Oregon, and Washington.

PART 702—RULES ON HEARINGS, REPORTS AND MEETINGS OF THE COMMISSION

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Subpart A—Hearings and Reports

AUTHORITY: Secs. 101-106, 71 Stat. 634-636, as amended; 42 U.S.C. 1975-1975e; Pub. L. 94—409, 90 Stat. 1241.

SOURCE: 32 FR 4063, Mar. 15, 1967, unless otherwise noted. Designated Subpart A at 42 FR 14108, Mar. 15, 1977.

§ 702.1 Definitions.

For purposes of the following Rules on Hearings of the United States Commission on Civil Rights, the following definitions shall apply, unless otherwise provided:

(a) "The Act" shall refer to the Civil Rights Act of 1957, 71 Stat. 634, as amended.

(b) "The Commission" shall refer to the United States Commission on Civil Rights or, as provided in § 702.2, to any authorized subcommittee thereof.

(c) "The Chairman" shall refer to the Chairman of the Commission or authorized subcommittee thereof or to any acting Chairman of the Commission or of such subcommittee.

(d) "Proceeding" shall refer collectively to any public session of the Commission and any executive session held in connection therewith.

(e) "Hearing" shall refer collectively to a public session of the Commission and any executive session held in connection therewith, but shall not include a session held for the sole purpose of receiving subpenaed documents.

(f) "The rules in this part" shall refer to the Rules on Hearings of the Commission.

(g) "Report" refers to statutory reports or portions thereof issued pursuant to Section 104(c) of the Civil Rights Act of 1957, as amended.

(h) "Verified answer" refers to an answer the truth of which is substantiated by oath or affirmation attested to by a notary public or other person who has legal authority to administer oaths.

[32 FR 4063, Mar. 15, 1967, as amended at 36 FR 5702, Mar. 27, 1971. Designated at 42 FR 14108, Mar. 15, 1977, and further amended at 44 FR 75149, Dec. 19, 1979]

§ 702.2 Authorization for hearing.

Under section 105(f) of the Act the Commission or, on the authorization of the Commission, any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of the Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable; and the holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of four members is present.

§ 702.3 Notice of hearing.

At least 30 days prior to the commencement of any hearing, the Commission shall cause to be published in the FEDERAL REGISTER notice of the date on which such hearing is to commence, the place at which it is to be held, and the subject of the hearing.

§ 702.4 Subpenas.

(a) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued by the Commission over the signature of the Chairman and may be served by any person designated by the Chairman.

(b) A witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the rules in this part at the time of service of the subpena.

(c) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a place outside the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a place within 50 miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(d) The Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses except as otherwise provided in § 702.6(e).

(e) Requests for subpena shall be in writing, supported by a showing of the general relevance and materiality of the evidence sought. Witness fees and mileage, computed pursuant to § 702.15, shall be paid by the person at whose instance a witness is subpenaed.

(f) Subpenas shall be issued at a reasonably sufficient time in advance of their scheduled return, in order to give subpenaed persons an opportunity to prepare for their appearance and to employ counsel, should they so desire.

(g) No subpenaed document or information contained therein shall be made public unless it is introduced into and received as part of the official record of the hearing.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75149 Dec. 19, 1979]

§ 702.5 Conduct of proceedings.

(a) The Chairman shall announce in an opening statement the subject of the proceeding.

(b) Following the opening statement, the Commission shall first convene in executive session if one is required pursuant to the provisions of § 702.6.

(c) The Chairman shall, subject to the approval of the Commission—

(1) Set the order of presentation of evidence and appearance of witnesses;

(2) Rule on objections and motions;

(3) Administer oaths and affirmations;

(4) Make all rulings with respect to the introduction into or exclusion from the record of documentary or other evidence;

(5) Regulate the course and decorum of the proceeding and the conduct of the parties and their counsel to insure that the proceedings are conducted in a fair and impartial manner.

(d) Proceedings shall be conducted with reasonable dispatch and due regard shall be had for the convenience and necessity of witnesses.

(e) The questioning of witnesses shall be conducted only by Members of the Commission, by authorized Commission staff personnel, or by counsel to the extent provided in § 702.7.

(f) In addition to persons served with a copy of the rules in this part pursuant to §§ 702.4 and 702.6, a copy of the rules in this part will be made available to all witnesses.

(g) The Chairman may punish breaches of order and decorum by censure and exclusion from the proceedings.

§ 702.6 Executive session.

(a) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session.

(b) The Commission shall afford any persons defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by them, before deciding to use such evidence or testimony.

(1) Such person shall be served with notice in writing of the date, time, and place made available for the appearance of witnesses at executive session, at least 10 days prior to such date, or where service is by mail at least 14 days prior to such date. This notice shall be accompanied by a copy of the rules in this part and by a brief summary of the information which the Commission has determined may tend to defame, degrade, or incriminate such person.

(2) The notice, summary, and rules in this part shall be served personally by depositing the same in the United States mail as certified mail, or by leaving a copy thereof at the last known residence or business address of such person.

(3) The date of service, for purposes of this section, shall be the day when the material is deposited in the United States mail or is delivered in person, as the case may be. When service is made by certified mail, the return post office receipt shall be proof of service; in all other cases, the acknowledgment of the party served, or the verified return of the one making service shall be proof of the same.

(c) If a person receiving notice under this section notifies the Commission within five days of service of such notice, or where service is by mail within eight days of service of such notice, that the time scheduled therein constitutes a hardship, the Commission may, in its discretion, set a new time for such person's appearance at the executive session.

(d) In the event such persons fail to appear at executive session at the time and place made available under paragraph (b) or (c) of this section, they shall not be entitled to another opportunity to appear at executive session, except as provided in § 702.11.

(e) If such persons intend to submit sworn statements of themselves or others, or if they intend that witnesses appear in their behalf at executive session, they shall, no later than 48 hours prior to the time set under paragraph (b) or (c) of this section, submit to the Commission, all such statements and a list of all witnesses. The Commission will inform such persons whether the number of witnesses requested is reasonable within the meaning of paragraph (b) of this section. In addition, the Commission will receive and dispose of requests from such persons to subpena other witnesses. Requests for subpenas shall be made sufficiently in advance of the scheduled executive session as to afford persons subpenaed reasonable notice of their obligation to appear at that session. Subpenas returnable at executive session shall be governed by the provisions of § 702.4.

(f) Persons for whom an executive session has been scheduled, and persons compelled to appear at such session, may be represented by counsel at such session to the extent provided by § 702.7.

(g) Attendance at executive session shall be limited to Members of the Commission, authorized Commission staff personnel, witnesses and their counsel at the time scheduled for their appearance, and such other persons whose presence is requested or consented to by the Commission.

(h) In the event the Commission determines to release or to use evidence or testimony which it has determined may tend to defame, degrade, or incriminate any persons, in such a manner as to reveal publicly their identity, such evidence or testimony, prior to such public release or use, will be presented at a public session, and the Commission will afford them an opportunity to appear as voluntary witnesses or to file a sworn statement in their own behalf and to submit brief and pertinent sworn statements of others.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979]

§ 702.7 Counsel.

(a) Persons compelled to appear in person before the Commission and any witness appearing at a public session of the Commission will be accorded the right to be accompanied and advised by counsel, who will have the right to subject their clients to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections.

(b) For the purpose of this section, "counsel" shall mean an attorney at law admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States.

(c) Failure of any persons to obtain counsel shall not excuse them from attendance in response to a subpena, nor shall any persons be excused in the event their counsel is excluded from the proceeding pursuant to § 702.5(g). In the latter case, however, such persons shall be afforded a reasonable time to obtain other counsel, said time to be determined by the Commission.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979]

§ 702.8 Evidence at Commission proceedings.

(a) The rules of evidence prevailing in courts of law or equity shall not control proceedings of the Commission.

(b) Where a witness testifying at a public session of a hearing or a session for return of subpenaed documents offers the sworn statements of other persons, such statements, in the discretion of the Commission, may be included in the record, provided they are received by the Commission within 24 hours in advance of the witness' appearance.

(c) The prepared statement of a witness testifying at a public session of a hearing, in the discretion of the Commission, may be placed into the record, provided that such statement is received by the Commission 24 hours in advance of the witness' appearance.

(d) In the discretion of the Commission, evidence may be included in the record after the close of a public session of a hearing, provided the Commission determines that such evidence does not tend to defame, degrade, or incriminate any person.

(e) The Commission will determine the pertinency of testimony and evidence adduced at its proceedings, and may refuse to include in the record of a proceeding or may strike from the record any evidence it considers to be cumulative, immaterial, or not pertinent.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979; 44 FR 76798, Dec. 28, 1979]

§ 702.9 Cross-examination at public session.

If the Commission determines that oral testimony of a witness at a public session tends to defame, degrade, or incriminate any person, such person, or through counsel, shall be permitted to submit questions to the Commission in writing, which, in the discretion of the Commission, may be put to such witness by the Chairman or by authorized Commission staff personnel.

[44 FR 75150, Dec. 19, 1979]

§ 702.10 Voluntary witnesses at public session of a hearing.

A person who has not been subpenaed and who has not been afforded an opportunity to appear pursuant to § 702.6 may be permitted, in the discretion of the Commission, to make an oral or written statement at a public session of a hearing. Such person may be questioned to the same extent and in the same manner as other witnesses before the Commission.

§ 702.11 Special executive session.

If, during the course of a public session, evidence is submitted which was not previously presented at executive session and which the Commission determines may tend to defame, degrade, or incriminate any person, the provisions of § 702.6 shall apply, and such extensions, recesses or continuances of the public session as it deems necessary shall be ordered by the Commission, except that the time and notice requirements of § 702.6 may be modified by the Commission provided reasonable notice of a scheduled executive session is afforded such person, and except that the Commission may, in its discretion, strike such evidence from the record, in which case the provisions of § 702.6 shall not apply.

§ 702.12 Contempt of the Commission.

Proceedings and process of the Commission are governed by section 105(g) of the Act, which provides:

> In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

§ 702.13 Intimidation of witnesses.

Witnesses at Commission proceedings are protected by the provisions of 18 U.S.C. 1505, which provide:

> Whoever corruptly, or by threats of force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any Committee of either House, or any joint committee of the Congress; or
>
> Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or
>
> Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any civil investigative demand duly and properly made under the Antitrust Civil Process Act willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of such demand; or
>
> Whoever corruptly, or by threats of force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

§ 702.14 Transcript of Commission proceedings.

(a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter, or by any other person or means designated by the Commission.

(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may for good cause be limited to inspection of the official transcript of their testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof.

(c) Persons who have presented testimony at a proceeding may ask within 60 days after the close of the proceeding to correct errors in the transcript of their testimony. Such requests shall be granted only to make the transcript conform to their testimony as presented at the proceeding.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979]

§ 702.15 Witness fees.

Pursuant to section 102(j) of the Act: A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 37 FR 23185, Oct. 31, 1972]

§ 702.16 Attendance of news media at public sessions.

Reasonable access for coverage of public sessions shall be provided to the various communications media, including newspapers, magazines, radio, newsreels, and television, subject to the physical limitations of the room in which the session is held and consideration of the physical comfort of Commission members, staff, and witnesses. However, no witnesses shall be televised, filmed, or photographed during the session nor shall the testimony of any witness be broadcast or recorded for broadcasting, if the witness objects.

[44 FR 75150, Dec. 19, 1979]

§ 702.17 Communications with respect to Commission proceedings.

During any proceeding held outside Washington, D.C., communications to the Commission with respect to such proceeding must be made to the Chairman or authorized Commission staff personnel in attendance. All requests for subpenas returnable at a hearing, requests for appearance of witnesses at a hearing, and statements or other documents for inclusion in the record of a proceeding, required to be submitted in advance, must be submitted to the Chairman, or such authorized person as the Chairman may appoint, at an office located in the community where such hearing or proceeding is scheduled to be held. The location of such office will be set forth in all subpenas issued under the rules in this part and in all notices prepared pursuant to § 706.2.

[44 FR 75150, Dec. 19, 1979]

§ 702.18 Commission reports.

(a) If a Commission report tends to defame, degrade, or incriminate any person, the report or relevant portions thereof shall be delivered to such person at least thirty (30) days before the report shall be made public in order that such person may make a timely verified answer to the report. The Commission shall afford such person an opportunity to file with the Commission a verified answer to the report or relevant portions thereof not later than twenty (20) days after service of the report or relevant portions thereof upon such person as provided by the regulations in this part.

(1) Such person shall be served with a copy of the report or relevant portions thereof, with an indication of the section(s) that the Commission has determined tend to defame, degrade, or incriminate such person, a copy of the Act and a copy of the regulations in this part.

(2) The report or relevant portions thereof, the Act, and regulations in this part shall be served by depositing the same in the U.S. mail via certified mail, return receipt requested, or by leaving a copy thereof at the last known residence or business address of such person.

(3) The date of sevice for the purposes of this section shall be the day the material is delivered either by the post office or otherwise, to such person or the agent of such person or at the last known residence or business address of such person. The acknowledgement of the party served, or the verified return of the one making service shall be proof of service except that when service is made by certified

mail, the return post office receipt may also constitute proof of same.

(b) If a person receiving a Commission report or relevant portions thereof under this part requests an extension of time from the Commission within 7 days of service of such report, the Commission may, upon a showing of good cause, grant the person additional time within which to file a verified answer.

(c) A verified answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report.

(d) Such verified answer shall be published as an appendix to the report: *Provided, however,* That the Commission may except from the answer such matter as it determines to be scandalous, prejudicial or unnecessary.

[36 FR 5702, Mar. 27, 1971. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75151, Dec. 19, 1979]

Subpart B—Meetings

AUTHORITY: 5 U.S.C. 552b, Pub. L. 94-409, 90 Stat. 1241.

SOURCE: 42 FR 14108, Mar. 15, 1977, unless otherwise noted.

§ 702.50 Purpose and scope.

This section contains the regulations of the U.S. Commission on Civil Rights implementing sections (a)-(f) of 5 U.S.C. 552b, the "Government in the Sunshine Act." They are adopted to further the principle that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Commission. They open to public observation meetings of the Commissioners of the U.S. Commission on Civil Rights except where the rights of individuals are involved or the ability of the Commission to carry out its responsibilities requires confidentiality.

§ 702.51 Definitions.

(a) *Commission* means the U.S. Commission on Civil Rights and any Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(b) *Commissioner* means a member of the U.S. Commission on Civil Rights appointed by the President under 42 U.S.C. 1975(b).

(c) *Solicitor* means the Solicitor of the U.S. Commission on Civil Rights.

(d) *Meeting* means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(1) The number of Commissioners required to take action on behalf of the Commission is four, except that such number is two when the Commissioners are a Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(2) Deliberations among Commissioners regarding the setting of the time, place or subject matter of a meeting, whether the meeting is open or closed, whether to withhold information discussed at a closed meeting, and any other deliberations required or permitted by 5 U.S.C. 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business which is not discussed through conference calls or a series of two party calls by the number of Commissioners required to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(e) *Public announcement* or *publicly announce* means the use of reasonable methods, such as the posting on Commission public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(f) *Staff Director* means the Staff Director of the U.S. Commission on Civil Rights.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

§ 702.52 Open meeting requirements.

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings which provide ample space, sufficient visibility and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

§ 702.53 Closed meetings.

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive Order;

(2) Disclose information relating solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided, that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record received by the Commission from a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information received by the Commission and contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would (i) In the case of information received by the Commission from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) be likely to significantly frustrate implementation of a proposed action, except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpena, or the Commission's participation in a civil action or proceeding, an action in a

foreign court or international tribunal, or an arbitration.

§ 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975d(f), vote to take such action.

(b) A separate vote shall be taken with respect to each meeting, a portion or portions of which is proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

(1) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as:

(i) Each meeting in such series involves the same particular matters, and

(ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph (b) of this section if one Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner, and:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information which is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under § 702.54(c) the Commissioners shall obtain from the Solicitor his or her opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (1) through (10) of § 702.53(a).

(1) For every meeting closed in accordance with paragraphs (1) through (10) of § 702.53(a), the Solicitor shall publicly certify in writing that, in his or her opinion, the meeting may be closed to the public and shall cite each relevant exemptive provision.

(2) A copy of certification by the Solicitor, together with a statement from the presiding officer of the closed meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Commission.

(e) For all meetings closed to the public, the Commission shall maintain a complete verbatim transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting which sets forth the time and place of the meeting and the persons present.

(1) In the case of a meeting, a portion of a meeting, closed to the public pursuant to paragraphs (8), (9)(i)(A), or (10) of § 702.53(a), the Commission may retain a set of minutes;

(i) such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(f) Any person whose interests may be directly affected by a portion of a meeting may request that such portion be closed to the public under § 702.53 or that it be open to the public if the Commission has voted to close the meeting pursuant to § 702.53(a) to § 702.53(a)(5), (6) or (7). The Commission will vote on the request if one Commissioner asks that a vote be taken.

(1) Such requests shall be made to the Staff Director within a reasonable amount of time after the meeting or vote in question is publicly announced.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

§ 702.55 Public announcement of meetings.

(a) *Agenda:* The Staff Director shall set as early as possible but in any event at least eight calendar days before a meeting, the time, place and subject matter for the meeting.

(1) Agenda items will be identified in detail adequate to inform the general public of the specific business to be discussed at the meeting.

(b) *Notice:* The Staff Director, as early as possible but in any event at least eight calendar days before a meeting, shall make public announcement of:

(1) The time of the meeting;

(2) Its place;

(3) Its subject matter;

(4) Whether it is open or closed to the public; and

(5) The name and phone number of a Commission staff member who will respond to requests for information about the meeting.

(c) *Changes:* (1) The time of day or place of a meeting may be changed following the public announcement required by § 702.55(b) of this subpart, if the Staff Director publicly announces such change at the earliest practicable time subsequent to the decision to change the time of day or place of the meeting.

(2) The date of a meeting may be changed following the public announcement required by § 702.55(b), or a meeting may be scheduled less than eight calendar days in advance, if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business requires such a meeting at an earlier date; and

(ii) The Staff Director, at the earliest practicable time following such vote, makes public announcement of the time, place and subject matter of such meeting, and whether it is open or closed to the public.

(3) The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to the public, may be changed following the public announcement required by 702.55(b) of this subpart if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business so requires; and

(ii) The Staff Director publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time subsequent to the decision to make such change.

(d) *Federal Register:* Immediately following all public announcements required by § 702.55(b) and (c) of this subpart, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed to the public, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about meeting, shall be submitted for publication in the FEDERAL REGISTER.

(1) Notice of a meeting will be published in the FEDERAL REGISTER even after the meeting which is the subject of the notice has occurred in order to provide a public record of all Commission meetings.

§ 702.56 Records.

(a) The Commission shall promptly make available to the public in an easily accessible place at Commission headquarters the following materials:

(1) A copy of the certification by the Solicitor required by § 702.54(e)(1).

(2) A copy of all recorded votes required to be taken by these rules.

(3) A copy of all announcements published in the FEDERAL REGISTER pursuant to this subpart.

(4) Transcripts, electronic recordings and minutes of closed meetings determined not to contain items of discussion or information which may be withheld under § 702.53.

(i) Copies of such material will be furnished to any person at the actual cost of transcription or duplication.

(b) Requests to review or obtain copies of records compiled under this Act, other than transcripts, electronic recordings or minutes of a closed meeting, will be processed under the Freedom of Information Act and, where applicable, the Privacy Act regulations of the Commission (Parts 704 and 706, respectively, of this title). Nothing in this subpart expands or limits the present rights of any person under these rules with respect to such requests.

(1) Requests to review or obtain copies of transcripts, electronic recordings or minutes of meetings of a closed meeting maintained under § 702.54(e) and not released under § 702.56(a)(4) shall be directed to the Staff Director who shall respond to such requests within ten (10) working days.

(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

§ 702.57 Administrative review.

(a) Any person who believes a Commission action governed by this subpart to be contrary to the provisions of this subpart shall file in writing with the Staff Director an objection specifying the violation and suggesting corrective action. Whenever possible, the Staff Director shall respond within ten (10) working days of the receipt of such objections.

PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

Sec.

703.1 Name and establishment.
703.2 Functions.
703.3 Scope of subject matter.
703.4 Advisory Committee Management Officer.
703.5 Membership.
703.6 Officers.
703.7 Subcommittees—Special Assignments.
703.8 Meetings.
703.9 Reimbursement of members.
703.10 Public availability of documents and other materials.

AUTHORITY: Sec. 105(c) of the Civil Rights Act of 1957, 71 Stat. 634, as amended.

SOURCE: 38 FR 15446, June 12, 1973, unless otherwise noted.

§ 703.1 Name and establishment.

Pursuant to Section 105(c) of the Act, the Commission has chartered and maintains Advisory Committees to the Commission in each State and the District of Columbia. All relevant provisions of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463 as amended) are applicable to the management, membership and operations of such committees and subcommittees thereof.

[44 FR 75151, Dec. 19, 1979]

§ 703.2 Functions.

Under the Commission's charter each State advisory committee shall:

(a) Advise the Commission in writing of any knowledge or information it has of any alleged deprivation of the right to vote and to have the vote counted, by reason of color, race, religion, sex, age, handicap or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(b) Advise the Commission concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution, and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;

(c) Advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress;

(d) Receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State committee;

(e) Initiate and forward advice and recommendations to the Commission upon matters which the State committee has studied;

(f) Assist the Commission in the exercise of its clearinghouse function and with respect to other matters which the State committee has studied;

(g) Attend, as observers, any open hearing or conference which the Commission may hold within the State.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

§ 703.3 Scope of subject matter.

The scope of the subject matter to be dealt with by State advisory committees shall be those subjects of inquiry or study with which the Commission itself is authorized to deal, pursuant to section 104(a) of the act. Each State advisory committee shall confine its studies to the State covered by its charter. It may, however, subject to the requirements of § 703.4, undertake to study within the limitations of the act, subjects other than those chosen by the Commission for study.

§ 703.4 Advisory Committee Management Officer.

(a) The Assistant Staff Director for the Office of Regional Programs is designated as Advisory Committee Management Officer pursuant to the requirements of the Federal Advisory Committee Act of 1972, (Pub. L. 92-463).

(b) Such officer shall carry out the functions specified in Section 8(b) of the Federal Advisory Committee Act.

(c) Such officer shall with respect to each State Advisory Committee, appoint an employee, subject to the supervision of the Regional Director of the Commission having responsibility for the State within which said Committee has been chartered, to provide services to the Committee and to be responsible for supervising the activity of the Committee pursuant to section 10 of the Federal Advisory Committe Act.

[44 FR 75151, Dec. 19, 1979]

§ 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each State Committee shall consist of at least 11 members appointed by the Commission. Members of the State Committee shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the State Committee may, at any time, be removed by the Commission.

(b) Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age and handicap status.

[44 FR 75151, Dec. 19, 1979]

§ 703.6 Officers.

(a) The officers of each State Advisory Committee shall be a Chairperson, Vice Chairperson and such other officers as may be deemed advisable.

(b) The Chairperson shall be appointed by the Commission.

(c) The Vice Chairperson and other officers shall be elected by the majority vote of the full membership of the Committee.

(d) The Chairperson, or in his/her absence the Vice Chairperson, under the direction of the Commission staff member appointed pursuant to § 703.4(b), shall:

(1) Call meetings of the Committee;

(2) Preside over meetings of the Committee;

(3) Appoint all subcommittees of the Committee;

(4) Certify for accuracy the minutes of Committee meetings prepared by the assigned Commission staff member; and

(5) Perform such other functions as the Committee may authorize or the Commission may request.

[44 FR 75151, Dec. 19, 1979]

§ 703.7 Subcommittees—Special Assignments.

Subject to the approval of the designated Commission employee, a State Advisory Committee may:

(a) Establish subcommittees, composed of members of the Committee to study and report upon matters under consideration, and it may authorize such subcommittees to take specific action within the competence of the Committee; and

(b) Designate individual members of the Committee to perform special projects involving research or study on matters under consideration by the Committee.

[44 FR 75151, Dec. 19, 1979]

§ 703.8 Meetings.

(a) Meetings of a Committee shall be convened by the designated Commission employee, or, subject to his/her approval, by the Chairperson, or by a majority of the Committee members. The agenda for such Committee or subcommittee meeting shall be approved by the designated Commission employee.

(b) A quorum shall consist of one-half or more of the members of the Committee, or five members, whichever is the lesser, except that with respect to the conduct of factfinding meetings as authorized in paragraph (e) of this section, a quorum shall consist of three members.

(c) Notice of all meetings of a Committee shall be given to the public.

(1) Notice shall be published in the FEDERAL REGISTER at least 15 days prior to the meetings, provided that in emergencies, such requirement may be waived.

(2) Notice of meetings shall be provided to the public by press releases and other appropriate means.

(3) Each notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

(d) Except as provided for in paragraph (d)(1) of this section, all meetings of committees or subcommittees shall be open to the public.

(1) The Assistant Staff Director for Regional Programs may authorize a committee or subcommittee to hold a meeting closed to the public if he/she determines that the closing of such meeting is in the public interest: *Provided,* That prior to authorizing the holding of a closed meeting the Assistant Staff Director will have requested and received the opinion of the Solicitor of the Commission with respect to whether the meeting may be closed under one or more of the exemptions provided in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(2) In the event that any meeting or portion thereof is closed to the public, the Committee shall publish, at least annually, in summary form a report of the activities conducted in meetings not open to the public.

(e) Advisory Committees and subcommittees may hold factfinding meetings for the purpose of inviting the attendance of and soliciting information and views from government officials and private persons respecting subject matters within the jurisdiction of the Committee or subcommittee.

(f) Any person may submit a written statement at any business or factfinding meeting of a Committee or subcommittee.

(g) At the discretion of the designated Commission employee or his/her designee, any person may make an oral presentation at any business or factfinding meeting, provided that such presentation will not defame, degrade or incriminate any other person as is prohibited by the Act.

[44 FR 75151, Dec. 19, 1979]

§ 703.9 Reimbursement of members.

(a) Advisory Committee members may be reimbursed by the Commission by a per diem subsistence allowance and for travel expenses at rates not to exceed those prescribed by Congress for Government employees, for the following activities only:

(1) Attendance at meetings, as provided for in § 703.8; and

(2) Any activity specifically requested and authorized by the Commission to be reimbursed.

(b) Members will be reimbursed for the expense of travel by private automobile on a mileage basis only to the extent such expense is no more than that of suitable public transportation for the same trip, unless special circumstances justify the additional expense of travel by private automobile.

[44 FR 75152, Dec. 19, 1979]

§ 703.10 Public availability of documents and other materials.

Part 704 of these rules and regulations shall be applicable to reports, publications, and other materials prepared by or for State advisory committees.

PART 704—INFORMATION DISCLOSURE AND COMMUNICATIONS

Sec.
704.1 Material available pursuant to 5 U.S.C. 552.
704.2 Complaints.
704.3 Other requests and communications.
704.4 Restrictions on disclosure of information.

Authority: Secs. 101-106, 71 Stat. 634-636, as amended (42 U.S.C. 1975-1975e); 5 U.S.C. 552.

§ 704.1 Material available pursuant to 5 U.S.C. 552.

(a) *Purpose, scope, and definitions.* (1) This section contains the regulations of the U.S. Commission on Civil Rights implementing 5 U.S.C. 552. These regulations inform the public with respect to where and how records and information may be obtained from the Commission. Officers and employees of the Commission shall make Commission records available under 5 U.S.C. 552 only as prescribed in this section. Nothing contained in this section, however, shall be construed to prohibit officers or employees of the Commission from routinely furnishing information or records which are customarily furnished in the regular performance of their duties.

(2) For the purposes of these regulations the terms listed below are defined as indicated:

"Commission" means the United States Commission on Civil Rights;

"Solicitor" means the Solicitor of the United States Commission on Civil Rights or his/her designee;

"FOIA" Freedom of Information Act, 5 U.S.C. 552;

"FOIA Request" means a request in writing, for records pursuant to 5 U.S.C. 552 which meets the requirements of 704.1(d) herein. These regulations do not apply to telephone or other oral communications and requests not complying with § 704.1(d)(1)(i);

"Staff Director" means the Staff Director of the United States Commission on Civil Rights.

(b) *General policy.* In order to foster the maximum participation of an informed public in the affairs of Government, the Commission will make the fullest possible disclosure of its identifiable records and information consistent with such considerations as those provided in the exemptions of 5 U.S.C. 552, which are set forth in paragraph (f) of this section.

(c) *Material maintained on file pursuant to 5 U.S.C. 552(a)(2).* Material maintained on file pursuant to 5 U.S.C. 552(a)(2) shall be available for inspection during regular business hours at the offices of the Commission at 1121 Vermont Avenue, NW., Washington, DC 20425. Copies of such material shall be available upon written request, specifying the material desired, addressed to the Solicitor's Unit, U.S. Commission on Civil Rights, Washington, DC 20425, and upon the payment of fees, if any, determined in accordance with paragraph (e) of this section.

(1) *Current index.* Included in the material available pursuant to 5 U.S.C. 552(a)(2) shall be an index of:

(i) All other material maintained on file pursuant to 5 U.S.C. 552(a)(2); and

(ii) All material published by the Commission in the Federal Register and currently in effect.

(2) *Deletion of identifying details.* Wherever deletions from material maintained on file pursuant to 5 U.S.C. 552(a)(2) are required in order

to prevent a clearly unwarranted invasion of privacy, justification for the deletions shall be placed as a preamble to documents from which such deletions are made.

(d) *Materials available pursuant to 5 U.S.C. 552(a)(3)*—(1) *Request Procedures.* (i) Each request for records pursuant to this subsection shall be in writing over the signature of the requester, addressed to the Solicitor's Unit, U.S. Commission on Civil Rights, Washington, DC 20425 and: (A) Shall clearly and prominently be identified as a request for information under the Freedom of Information Act [if submitted by mail or otherwise submitted in an envelope or other cover, be clearly and prominently identified as such on the envelope or other cover—e.g., FOIA]; and (B) shall contain a sufficiently specific description of the record requested with respect to names, dates, and subject matter to permit such record to be identified and located; and (C) shall contain a statement that whatever costs involved pursuant to § 704.1(e) will be paid, that such costs will be paid up to a specified amount, or that waiver or reduction of fees is requested pursuant to § 704.1(e).

(ii) If the information submitted pursuant to § 704.1(d)(1)(i)(B) is insufficient to enable identification and location of the records, the Solicitor shall as soon as possible notify the requester in writing indicating the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought. Time requirements under these regulations are tolled from the date notification under this subsection is sent to the requester until an answer in writing to such notification is received from requester.

(iii) A request for records which is not in writing or does not comply with § 704.1(d)(1)(i) is not a request under the Freedom of Information Act and the 10 day time limit for agency response under the Act will not be deemed applicable.

(iv) Except as otherwise provided herein, the Solicitor shall immediately notify the requester of noncompliance with § 704.1(d)(1)(i)(C) and § 704.1(e).

(2) *Agency determinations.* (i) Responses to all requests pursuant to 5 U.S.C. 552(a)(3) shall be made by the Solicitor in writing to the requester within 10 working days after receipt by the Solicitor of such request except as specifically exempted under § 704.1(d)(1) (ii), (iii) and (iv), and shall state: (A) Whether and to what extent the Commission will comply with the request; (B) the probable availability of the records or that the records may be furnished with deletions or that records will be denied as exempt pursuant to 5 U.S.C. 552(b) (i) through (ix); (C) the estimated costs, determined in accordance with 704.1(e) herein, including waiver or reduction of fee as appropriate and any deposit or prepayment requirement; and (D) when records are to be provided, the time and place at which records or copies will be available determined in accordance with the terms of the request and with § 704.1(d)(3). Such response shall be termed a determination notice.

(ii) In the case of denial of requests in whole or part the determination notice shall state: (A) Specifically what records are being denied; (B) the reasons for such denials; (C) the specific statutory exemption(s) upon which such denial is based; (D) the names and titles or positions of every person responsible for the denial of such request; and (E) the right of appeal to the Staff Director of the Commission and procedures for such appeal as provided under § 704.1(g).

(iii) Each request received by the Solicitor's Unit for records pursuant to these regulations shall be recorded immediately. The record of each request shall be kept current, stating the date and time the request is received, the name and address of the person making the request, any amendments to such request, the nature of the records requested, the action taken regarding the request, including waiver of fees, extensions of time pursuant to 5 U.S.C. 552(a)(6)(B), and appeals. The date and subject of any letters pursuant to § 704.1(d)(1) or agency determinations pursuant to paragraph (d)(2)(i) of this section, the date(s) any records are subsequently furnished, and the payment requested and received.

(3) *Time limitations.* (i) Time limitations for agency response to a request for records established by these regulations shall begin when the request is recorded pursuant to § 704.1(d)(2)(iii). A written request pursuant to FOIA but sent to an office of the Commission other than the Solicitor's Unit shall be date stamped, initialed and redirected immediately to the Solicitor's Unit. The required period for agency determination shall begin when it is received by the Solicitor's Unit in accordance with § 704.1(d)(2)(iii).

(ii) In unusual circumstances, pursuant to 5 U.S.C. 552(a)(6)(B), the Solicitor may, in the case of initial determinations under these regulations, extend the 10 working day time limit in which the agency is required to make its determination notification. Such extension shall be communicated in writing to the requesting party setting forth with particularity the reasons for such extension and the date on which a determination is expected to be transmitted. Such extensions may not exceed 10 working days for any request and may only be used to the extent necessary to properly process a particular request. Such extension is permissible only where there is a demonstrated need: (A) To search for and collect the requested records from field facilities or other establishments that are separate from the Solicitor's Unit; (B) to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (C) for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the same agency having substantial subject matter interest therein.

(e) *Fees*—(1) *Fee schedule:*

(i) Photocopy reproductions from all types of copying processes, each reproduction image—$.03.

(ii) Standard searching, per hour (minimum charge one-quarter hour)—$4.09.

(iii) Searching requiring particular training or skills not required of clerical personnel, per hour (minimum one-half hour)—$8.88.

(iv) The above search fee is not applicable to computerized record search: In situations involving the use of computers to locate and extract the requested information charges will be based only on the direct cost to the agency, including labor, material and computer time.

(v) There will be a charge of $1.00 each for certification of true copies.

(vi) Payment of fees shall be made by cash (if delivered in person), check or money order payable to "U.S. Treasury".

(2) The Solicitor may in his/her discretion, waive fees in whole or part otherwise assessable under paragraph (e)(1) of this section where:

(i) The total cost of providing the records is less than $5.00.

(ii) Payment of the full fee by a State or local government agency, or nonprofit group would not be in the general public interest.

(iii) The records have been requested by a Federal agency, a foreign government, or an international governmental organization.

(3) Fees shall be waived or reduced for records requested in writing under § 704.1 when the Solicitor's Unit determines that:

(i) An individual has provided sufficient evidence in a signed statement that he is indigent and that reduction or waiver would not constitute an unreasonable expense to the Commission.

(ii) A person has demonstrated in a written statement that waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public. Requests for waiver or reduction under this subsection must be accompanied by a signed statement indicating ability to pay.

(4) Whenever waiver or reduction of fee is granted only one copy of the record will be furnished.

(5) Appeals from denials of requests for waiver or reduction of fees shall be considered by the Staff Director pursuant to the criteria set forth in § 704.1(e) (2) and (3). Appeal procedure under this subsection shall be in accordance with § 704.1(g).

(6) Whenever a notification is required under § 704.1(d)(1)(iv) or the estimated costs exceed the limit established by the requesting party and the Solicitor has not determined to waive or reduce such fees as provided herein, such notification shall:

(i) Provide the requesting party with such information regarding cost as may be available;

(ii) Extend an offer to the requesting party to confer with the Solicitor in an attempt to reformulate the request in a manner that will minimize the fees and still meet the needs of the requesting party;

(iii) Inform the requesting party that the time requirement imposed by § 704.1(d)(2)(i) will be tolled pending a reformulation of the request, or receipt of an agreement from the requester to bear the estimated costs.

(7) Whenever a requesting party is notified of the possibility of an unproductive search in accordance with § 704.1(d)(2)(i)(B), no search will be conducted until prepayment is made or waived under § 704.1(e) (2) or (3). The time requirement under § 704.1(d)(2)(i) will be tolled from the date of dispatch prepayment as required.

(8) Whenever the estimated cost of providing requested records exceeds $25.00, the requesting party will be so notified and required to prepay the estimated cost, unless waived, before a search for such records will be conducted. The time requirement under § 704.1(d)(2)(i) will be tolled from the date of dispatch of notification until the requester makes prepayment as required.

(f) *Exemptions* (5 U.S.C. 552(b))—

(1) *General.* The Commission may exempt from disclosure matters that are:

(i) (A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would: (A) Interfere with enforcement proceedings; (B) deprive a person of a right to a fair trial or an impartial adjudication; (C) constitute an unwarranted invasion of personal privacy; (D) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, would disclose confidential information furnished only by the confidential source; (E) disclose investigative techniques and procedures; or (F) endanger the life or physical safety of law enforcement personnel.

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) *Investigatory records* (5 U.S.C. 552(b)(7)). (i) Among the documents exempt from disclosure pursuant to § 704.1(f)(1)(vii) shall be investigative files or similar documents reflecting investigations which either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records would: (A) Deprive a person of a right to a fair trial or an impartial adjudication; (B) constitute an unwarranted invasion of personal privacy; (C) disclose the identity of a confidential source; (D) dis-

close investigative techniques and procedures; or (E) endanger the life or physical safety of law enforcement personnel.

(ii) Among the documents included in paragraph (f)(2)(1)(C) of this section, shall be documents which disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this subsection to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness will be inhibited by disclosure.

(3) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(g) *Administrative appeals.* (1) These procedures apply whenever a requester is either denied records under § 704.1(d)(2)(i) or denied waiver or reduction of fees under § 704.1(e)(2) or (3).

(2) Parties may appeal § 704.1(d)(2)(i) and (e) (2) or (3) decisions within 90 days of the date of such decision by filing a written request for review addressed to the Staff Director, U.S. Commission on Civil Rights, Washington, DC 20425, by certified mail, including a copy of the written denial, and may include a statement of the circumstances, reasons or arguments advanced in support of disclosure or waiver/reduction of fees. Review will be made by the Staff Director on the basis of the written record.

(3) The decision on review of any appeal filed under this subsection shall be in writing over the signature of the Staff Director, will be promptly communicated to the person requesting review, and will constitute the final action of the Commission.

(4) Determinations of appeals filed under this subsection shall be made within 20 working days after the receipt of such appeal. If, on appeal, denial of records is in whole or part upheld, the Staff Director shall notify the persons making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4).

(5) An extension of time may be granted under this subsection pursuant to criteria established in § 704.1(d)(3)(ii) (A) to (C), except that such extension together with any extension which may have been granted pursuant to § 704.1(d)(3)(ii) may not exceed a total of 10 working days.

[40 FR 22833, May 27, 1975, as amended at 44 FR 75152, Dec. 19, 1979]

§ 704.2 Complaints.

Any person may bring to the attention of the Commission a grievance which he believes falls within the jurisdiction of the Commission, as set forth in section 104 of the Act. This shall be done by submitting a complaint in writing to the Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Washington, DC 20425. Allegations falling under section 104(a) (1) and (5) of the Act (discrimination or fraud in voting) must be under oath or affirmation. All complaints should set forth the pertinent facts upon which the complaint is based, including but not limited to specification of (a) names and titles of officials or other persons involved in acts forming the basis for the complaint; (b) accurate designations of place locations involved; (c) dates of events described in the complaint.

[34 FR 7577, May 10, 1969, as amended at 44 FR 75152, Dec. 19, 1979]

§ 704.3 Other requests and communications.

Requests for information should be addressed to Press and Communications Division and requests for Commission literature should be directed to Publications Management Division, U.S. Commission on Civil Rights, Washington, DC 20425. Communications with respect to Commission proceedings should be made pursuant to § 702.17 of this chapter. All other communications should be directed to Office of Staff Director, U.S. Commission on Civil Rights, Washington, DC 20425.

[44 FR 75152, Dec. 19, 1979]

§ 704.4 Restrictions on disclosure of information.

(a) By the provisions of section 102(g) of the Act, no evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission, and any person who releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000 or imprisoned for not more than 1 year.

(b) Unless a matter of public record, all information or documents obtained or prepared by any Member, officer, or employee of the Commission, including members of State Advisory Committees, in the course of his official duties, or by virtue of his official status, shall not be disclosed or used by such person for any purpose except in the performance of his official duties.

(c) Any Member, officer, or employee of the Commission including members of State Advisory Committees, who is served with a subpena, order, or other demand requiring the disclosure of such information or the production of such documents shall appear in response to such subpena, order, or other demand and, unless otherwise directed by the Commission, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any such person who is served with such a subpena, order, or other demand shall promptly advise the Commission of the service of such subpena, order, or other demand, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

[32 FR 9684, July 4, 1967]

PART 705—MATERIALS AVAILABLE PURSUANT TO 5 U.S.C. 552a

Sec.
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705.95 Accounting of the disclosures of records.

AUTHORITY: Secs. 101-106, 71 Stat. 634-636 as amended (42 U.S.C. 1975-1975c); 5 U.S.C. 552a.

SOURCE: 40 FR 45727, Oct. 2, 1975, unless otherwise noted. Redesignated at 44 FR 75152, Dec. 19, 1979.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 44 FR 75152, Dec. 19, 1979.

§ 705.1 Purpose and scope.

(a) The purpose of this part is to set forth rules to inform the public regarding information maintained by the Commission on Civil Rights about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The rules in this part carry out the requirements of the Privacy Act of 1974 (Pub. L. 93-579) and in particular 5 U.S.C. 552a as added by that Act.

(c) The rules in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 705.2 Definitions.

For the purpose of this regulation:

(a) The terms "Commission" and "agency" mean the U.S. Commission on Civil Rights;

(b) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) The term "maintain" includes maintain, collect, use, or disseminate;

(d) The term "record" means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(e) The term "system record" means a group of any records under the control of the Commission from which information may be retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to that individual;

(f) The term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in section 8 of title 13; and

(g) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(h) For purposes of these Rules, a "confidential source" means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

§ 705.3 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or her or an individual seeking access to information or records pertaining to him or her which is available under the Privacy Act of 1974, shall present his or her request in person or in writing to the Solicitor of the Commission.

(b) In addition to meeting the requirements set forth in § 705.4(c) or (d), any person who requests information under these regulations shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. If possible, that description should include the nature of the records sought, the approximate dates covered by the record, and, if known by the requester, the system in which the record is thought to be included. Requested information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information cannot be treated as a formal request.

(c) If the description is insufficient, the agency will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

[40 FR 45727, Oct. 2, 1975, as amended by 42 FR 12046, Mar 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

§ 705.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The Solicitor is the designated Privacy Act Officer for the Commission.

(b) An individual making a request to the Solicitor in person may do so at the Commission's headquarters office, 1121 Vermont Avenue, NW., Washington, DC 20425, on any business day during business hours. Persons may also appear for purposes of identification only, at any of the regional offices of the Commission on any business day during business hours. Regional offices are located as follows:

Region I: U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223-4671 (8:45 a.m.-5:30 p.m.)

Region II: U.S. Commission on Civil Rights, 26 Federal Plaza, Room 1639, New York, NY 10007, (212) 264-0543 (9:00 a.m.-5:30 p.m.)

Region III: U.S. Commission on Civil Rights, 2120 L Street, N.W., Room 510, Washington, DC 20037, (202) 254-6670 (8:45 a.m.-5:30 p.m.)

Region IV: U.S. Commission on Civil Rights, Citizens Trust Bank Building, 75 Piedmont Avenue, NE., Atlanta, Georgia 30303, (404) 221-4344 (9:00 a.m.-5:30 p.m.)

Region V: U.S. Commission on Civil Rights, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7371 (8:45 a.m.-5:30 p.m.)

Region VI: U.S. Commission on Civil Rights, Heritage Plaza, 418 South Main, First Floor, San Antonio, Texas 78204, (512) 225-4810 (8:45 a.m.-5:30 p.m.)

Region VII: U.S. Commission on Civil Rights, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374-5253 (8:00 a.m.-5:30 p.m.)

Region IX: U.S. Commission on Civil Rights, 312 North Spring Street, Room 1015, Los Angeles, California 90012, (213) 688-5705 (8:45 a.m.-5:00 p.m.)

Region X: U.S. Commission on Civil Rights, Federal Building, 915 Second Avenue, Room 2852, Seattle, Washington 98174, (206) 442-1246 (8:00 a.m.-5:00 p.m.)

(c) An individual seeking access to records in person may establish his or her identity by the presentation of one document bearing a photograph (such as a driver's license, passport, or identification card or badge) or by the presentation of two items of identification which do not bear a photograph, but do bear both a name and address (such as a credit card). When identification is made without photographic identification the Commission will request a signature comparison to the signature appearing on the items offered for identification, whenever possible and practical.

(d) An individual seeking access to records by mail shall establish his or her identity by a signature, address, date of birth, and one other identification, such as a copy of a driver's license, passport, identification card or badge, credit card or other document. The words "Privacy Act Request" should be placed in capital letters on the face of the envelope in order to facilitate requests by mail.

(e) An individual seeking access in person or by mail who cannot provide the required documentation of identification may provide a notarized statement, swearing or affirming to his or her identity and to the fact that he or she understands that there are criminal penalties for the making of false statements.

(f) The parent or guardian of a minor or a person judicially determined to be incompetent, in addition to establishing the identity of the minor or incompetent person he or she represents as required by paragraphs (a) through (c) of this section, shall establish his or her own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or court order establishing guardianship.

(g) An individual seeking to review information about himself or herself may be accompanied by another person of his or her own choosing. In all such cases, the individual seeking access shall be required to furnish a written statement authorizing the discussion of his or her record in the presence of the accompanying person.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12046, Mar 2, 1977. Redesignated and amended at 44 FR 75152, Dec. 19, 1979]

§ 705.5 Disclosure of requested information to individuals.

The Solicitor, or one or more assistants designated by him or her, upon receiving a request for notification of the existence of a record, or for access to a record shall (a) determine whether such record exists; (b) determine whether access is available under the Privacy Act; (c) notify the requesting person of those determinations within 10 (ten) working days (excluding Saturdays, Sundays, and legal public holidays); and (d) provide access to information pertaining to that person which has been determined to be available.

§ 705.6 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished to him or her under this part may request the agency to correct or amend all or part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the Solicitor.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment.

(2) The name of the system of records in which the record sought to be amended is maintained.

(3) The location of the record system from which the record was obtained.

(4) A copy of the record sought to be amended or a description of that record.

(5) A statement of the material in the record that should be corrected or amended.

(6) A statement of the specific wording of the correction or amendment sought.

(7) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 705.7 Agency review of request for correction or amendment of the record.

Within ten (10) working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request for the correction or amendment of a record, the Solicitor shall acknowledge receipt of the request and inform the individual that his or her request has been received and inform the individual whether further information is required before the correction or amendment can be considered. Further, the Solicitor shall promptly, and, under normal circumstances, not later than thirty (30) working days after receipt of the request, make the requested correction or amendment or notify the individual of his or her refusal to do so, including in the notification the reasons for the refusal, and the procedures established by the Commission by which the individual may initiate a review of that refusal. In the event of correction or amendment, an individual shall be provided with one copy of each record or portion thereof corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment. The Commission shall also provide to all prior recipients of such a record, the corrected or amended information to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12046, Mar. 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

§ 705.8 Appeal of an initial adverse agency determination.

(a) Any individual whose request for access or for a correction or amendment which has been denied, in whole or in part, by the Solicitor may appeal that decision to the Staff Director of the Commission, 1121 Vermont Avenue, NW., Room 800, Washington, DC 20425, or to a designee of the Staff Director.

(b) The appeal shall be in writing and shall:

(1) Name the individual making the appeal;

(2) Identify the record sought to be amended or corrected;

(3) Name the record system in which that record is contained;

(4) Contain a short statement describing the amendment or correction sought; and

(5) State the name of the person who initially denied the correction or amendment.

(c) Not later than thirty (30) working days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the agency received the appeal, the Staff Director shall complete his or her review of the appeal and make a final decision thereon, unless, for good cause shown, the Staff Director extends the appeal period beyond the initial thirty (30) day appeal period. In the event of such an extension the Staff Director shall promptly notify the individual making the appeal that the period for a final decision has been extended.

(d) After review of an appeal request, the Staff Director will send a written notice to the requester containing the following information:

(1) The decision, and if the denial is upheld, the reasons for the decision;

(2) The right of the requester to institute a civil action in a Federal District Court for judicial review of the decision, if the appeal is denied; and

(3) The right of the requester to file with the Commission a concise state-

ment setting forth the reasons for his or her disagreement with the Commission's decision denying the request. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if the Commission considers it appropriate, of the agency's reasons for denying the requested correction or amendment. These statements shall also be provided to all prior recipients of the record to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12047, Mar. 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

§ 705.9 Disclosure of records to a person other than the individual to whom the record pertains.

(a) Any individual who desires to have his or her record disclosed to or mailed to a third person may authorize that person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized. The agent shall also submit proof of his or her own identity as provided in § 705.4.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court to be incompetent, due to physical or mental incapacity, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, copy of a court order or similar documents, and proof of the individual's identity as provided in § 705.4.

(c) An individual to whom a record is to be disclosed, in person, pursuant to this part may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 705.10 Fees.

If an individual requests copies of his or her records the charge shall be three (3) cents per page, *Provided, however,* That the Commission shall not charge for copies furnished to an individual as a necessary part of the process of disclosing the record to an individual. Fees may be waived or reduced in accordance with § 704.1(e) of the Commission's regulations (45 CFR Part 704) because of indigency, where the cost is nominal, when it is in the public interest not to charge, or when waiver would not constitute an unreasonable expense to the Commission.

§ 705.11 Penalties.

Any person who makes a false statement in connection with any request for a record, or in any request for an amendment to a record under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 705.12 Special procedures: Information furnished by other agencies.

When records or information sought from the Commission include information furnished by other Federal agencies, the Solicitor shall consult with the appropriate agency prior to making a decision to disclose or to refuse to disclose the record, but the decision whether or not to disclose the record shall be made by the Solicitor.

§ 705.13 Exemptions.

(a) Under the provision of 5 U.S.C. 552a(k), it has been determined by the agency that the following exemptions are necessary and proper and may be asserted by the agency:

(1) *Exemption (k)(2) of the Act.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he or she would otherwise be eligible for, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identify of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(2) *Exemption (k)(4) of the Act.* Statistical personnel records that are used only to generate aggregate data or for other evaluative or analytical purposes and which are not used to make decisions on the rights, benefits, or entitlements of individuals.

(3) *Exemption (k)(5) of the Act.* Investigatory material maintained solely for the purposes of determining an individual's qualifications, eligibility, or suitability for employment in the Federal civilian service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) Testing or examination material used solely to determine individual qualifications for promotion or appointment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(b) Following are Commission systems of records which are partially exempt under 5 U.S.C. 552a(k)(2), (4), (5), and (6) and the reasons for such exemptions:

(1) *Appeals, Grievances and Complaints (staff)—Commission Project, CRC-001.* Exempt partially under 5 U.S.C. 552a(k)(2)—The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(2) *Complaints, CRC-003—Exempt partially under 5 U.S.C. 552a(k)(2).* The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(3) *Commission projects, CRC-004—Partially exempt under 5 U.S.C. 552a(k)(a).* The reasons for asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(4) *Other Employee Programs: EEO, Troubled Employee, and Upward Mobility, CRC-006—Partially exempt under 5 U.S.C. 552a(k)(4), (5), and (6).* The reasons for asserting the exemptions are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, primarily, to facilitate proper selection or continuance of the best applicants or persons for a given position.

(5) *State Advisory Committees Projects, CRC-009—Partially exempt under 5 U.S.C. 552a(k)(2).* The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

§ 705.95 Accounting of the disclosures of records.

(a) All disclosures of records covered by this Part 705, except for the exemptions listed in § 705.95(b), shall be accounted for by keeping a written record of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature and purpose of the disclosure.

(b) No accounting is required for disclosures of records to those officials and employees of the Commission who have a need for the record in the performance of their duties, or if disclosure would be required under the Freedom of Information Act. 5 U.S.C. 552.

(c) The accounting shall be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Record Service for storage, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(d) The accounting of disclosures may be recorded in any system the Commission determines is sufficient for this purpose, however, the Commission must be able to construct from its system a listing of all disclosures. The system of accounting of disclosures is not a system of records under the definition in § 705.2(e) and no accounting need be maintained for disclosure of the accounting of disclosures.

(e) Upon request of an individual to whom a record pertains, the accounting of the disclosures of that record shall be made available to the requester, provided that he/she has complied with § 705.3(a) and with § 705.4(c) or (d).

[42 FR 12047, Mar. 2, 1977]

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: Secs. 101-106, 71 Stat. 634-636, as amended (42 U.S.C. 1975-1975e) Pub. L. 95-521, as amended, 5 CFR 735.

SOURCE: 44 FR 75152, Dec. 19, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 706.1 Adoption of regulations.

Pursuant to 5 CFR 735.104(f) and 735.502, the U.S. Commission on Civil Rights (hereinafter referred to as the Commission) hereby adopts, with appropriate modifications, relevant sections of Part 735 of Title 5 of the Code of Federal Regulations as renumbered and set forth below.

§ 706.2 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the United States Commission on Civil Rights' regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests.

§ 706.3 Definitions.

In this part:

"Commission" means the United States Commission on Civil Rights, an Executive agency as defined by Section 105 of Title 5, United States Code.

"Employee" means an officer or employee of the Commission including a special Government employee, as defined in 18 U.S.C. 202.

"Executive order" means Executive Order 11222 of May 8, 1965.

"Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 706.4 Distribution.

(a) Within 90 days after publication of these regulations in the FEDERAL REGISTER the Commission shall furnish each employee with a copy of the regulations.

(b) The Commission shall furnish all new employees with a copy of the regulations at the time of their entrance on duty.

(c) The Commission shall bring the regulations to the attention of each employee annually, and at such other times as circumstances warrant.

(d) The Commission shall have available for review by employees copies of relevant laws, the Executive order, and pertinent Commission instructions relating to ethical and other standards of conduct.

§ 706.5 Counseling.

The Solicitor of the Commission shall serve as the agency's ethical conduct counselor and is the designated agency official for the purposes of the Ethics in Government Act of 1978, Pub. L. 95-521. The Solicitor shall respond to requests by employees and special Government employees for advice and guidance respecting questions of ethical conduct, conflicts of interest, reporting of financial interests and other matters of law covered by these regulations.

§ 706.6 Disciplinary and other remedial action.

An employee of the Commission who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interests may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by an employee of any conflicting interest; or

(c) Disqualification for a particular assignment.

§ 706.7 Outside employment and other activity.

Employees of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of their Government employment. Employees who wish to engage in outside employment shall first obtain the approval, in writing, of their supervisor.

§ 706.8 Prohibition against disclosure of evidence.

All employees of the Commission are subject to the prohibition on disclosure of evidence taken in executive session contained in Section 102(g) of the Civil Rights Act of 1957, 71 Stat. 634, as amended.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 706.9 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Commission efficiency or economy;

(d) Making a Commission decision outside official channels;

(e) Losing complete independence or impartiality; or

(f) Affecting adversely the confidence of the public in the integrity of the Commission.

§ 706.10 Gifts, entertainment and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractural or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions from the prohibitions contained in paragraph (a) of this section are as follows:

(1) Gifts, entertainment and favors which derive from family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Aceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) Employees shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than themselves. This paragraph, however, does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and 5 U.S.C. 7342.

(e) Neither this section nor § 706.11 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part, for which no Government payment or reimbursement is made. This paragraph, however, does not allow employees to be reimbursed, or payment to be made on their behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits.

§ 706.11 Proscribed outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflicts of interest; or

(2) Outside employment which tends to impair mental or physical capacity to perform Governmental duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for service to the Government as prohibited by 18 U.S.C. 209.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or Commission regulations. An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational public service, or civic organization; or

(3) Outside employment permitted under these regulations.

§ 706.12 Financial interests.

(a) Employees shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with their Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through their Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive order, or Commission regulations.

§ 706.13 Use of Government property.

Employees shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. Employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued them.

§ 706.14 Misuse of information.

For the purpose of furthering a private interest, employees shall not directly or indirectly use, or allow the use of, official information obtained through or in connection with their Government employment, which has not been made available to the general public.

§ 706.15 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

§ 706.16 Gambling, betting and lotteries.

Employees shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 706.17 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 706.18 Miscellaneous statutory provisions.

Employees shall acquaint themselves with each statute that relates to their ethical and other conduct as an employee of the Commission and of the Government. The attention of Commission employees is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service";

(b) Chapter II of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned;

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913);

(d) The prohibitions against disloyalty and striking (5 U.S.C. 73811; 18 U.S.C. 1918);

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784);

(f) The prohibitions against the disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 1905);

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c));

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719);

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917);

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001);

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508);

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of the employee by reason of his/her employment (18 U.S.C. 654);

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285);

(p) The prohibitions against political activities in subchapter III of chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608;

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agent Registration Act (18 U.S.C. 219).

Subpart C—Financial Reporting Requirements

§ 706.19 Statements of financial and property interests and outside employment.

Pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, referred to hereinafter in this subpart as "the Act"), the following officers and employees of the Commission are required to file annual reports of financial and property interests and outside employment if they have served 61 days or more in their positions during the preceding calendar year:

(a) Officers and employees (including special government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1);

(b) Employees in the excepted service in positions which are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics; and

(c) Each designated agency ethics official.

§ 706.20 Time and place for filing of reports.

(a) Annual reports are to be filed no later than May 15 of each calendar year, except that persons assuming a position for which reports are required who have not immediately prior to this assumption occupied a covered position in another agency, must file a report within 30 days after assuming the position at the Commission. In the event an individual terminates employment with the Commission and does not accept another position for which reporting is required, the report must be filed no later than the 30th day after termination, covering:

(1) The preceding calendar year if the annual May 15 report has not been filed; and

(2) The portion of the present calendar year up to the date of termination.

(b) Reports shall be filed with the designated ethics officer (Solicitor) of the Commission. The reports of the designated ethics officer and nominees to and holders of positions which require confirmation by the Senate shall be transmitted by the Solicitor to the Office of Government Ethics of the Office of Personnel Management.

§ 706.21 Exclusion of certain positions from reporting requirements.

(a) Under section 201(f)(5) of the Act, a report is required of any person in the executive branch in a position excepted from the competitive service by reason of being of a confidential or policymaker character. An exemption is available, as provided below, for a person in any such position classified below GS-16 (or the rate of basic pay for which is less than the minimum rate of basic pay fixed for GS-16) who has no role in advising or making policy determinations with respect to agency programs or policies. Such persons may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature, consistent with the basic criterion set forth in the preceding sentence.

(b) The exclusion of any position will be effective as of the time the Commission files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of its current occupant. Such a list must be filed with the Office of Government Ethics on or before the date on which such reports are due under the Act.

(c) In the event that the Office of Government Ethics finds that one or more positions have been improperly excluded, it will so advise the Commission and set a date for the filing of the report.

§ 706.22 Information required to be reported—reporting forms.

Information required to be reported by the Act shall be set forth in the manner specified in, and in accordance with the instructions contained in, Standard Forms issued by the Office of Personnel Management, to be used as follows:

(a) Standard Form 278—for use by an officer or employee filing (1) an annual report pursuant to section 201(d) of the Act, or (2) a departure report upon termination of employment, pursuant to section 201(e) of the Act;

(b) Standard Form 278A—for use by (1) an individual assuming a position for which reporting is required pursuant to section 201(a) of the Act; or (2) an individual whose nomination has been transmitted by the President to the Senate, pursuant to section 201(b) of the Act.

§ 706.23 Review of reports.

(a) Financial reports are reviewed by the Commission's designated Ethics official or the Director of the Office of Government Ethics, as appropriate. Reports are to be reviewed within 60 days after the date of their filing or transmittal to the Office of Government Ethics.

(b) After reviewing a report, the reviewing official is required to:

(1) State upon the report that the reporting individual is in compliance with applicable laws and regulations and to sign the report;

(2) Notify the reporting individual that additional information is required to be submitted and the time by which it must be submitted; or

(3) Notify the reporting individual that the report indicates noncompliance and afford the individual a rea-

sonable opportunity for a written or oral response after which the reviewing official reaches an opinion whether the individual is in compliance.

(c) If the reviewing official determines that the reporting individual is not in compliance with applicable laws and regulations, the reviewing official will notify the individual of that opinion, and after an opportunity for personal consultation, notify the individual of the steps which should be taken to assure compliance and the date by which such steps should be taken.

(d) The use of any steps to bring the individual in compliance are to be in accordance with regulations issued by the Director of the Office of Government Ethics.

(e) To assist employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, the designated Commission ethics official is to maintain a list of those circumstances or situations which have resulted or may result in noncompliance and the lists are to be periodically published and furnished to individuals required to file reports under this Act.

§ 706.24 Public access to financial disclosure reports.

(a) Pursuant to section 205(b) of the Act, each report will be made available for public inspection within 15 days after the report is received by the agency, whether or not the review of the report prescribed by section 206 of the Act has been completed.

(b) Pursuant to section 205(b) of the Act, as amended by Pub. L. 96-19, the following rules are applicable to public access to financial reports:

(1) A financial disclosure report may not be made available to any person nor may a copy thereof be provided to any person except upon written application by such person stating:

(i) That person's name, occupation, and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(iii) That such person is aware that it is unlawful to obtain or use a report:

(A) For any unlawful purpose;

(B) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) For determining or establishing the credit rating of any individual; or

(D) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. Any application for a report shall be available to the public during the period in which the requested report is available to the public.

(c) Requests for copies of financial disclosure reports of officers appointed by the President by and with the advice and consent of the Senate, as well as nominees to such offices and designated Commission ethics officials, may be directed to the Director of the Office of Government Ethics.

(d) To gain access to or to obtain a copy of a report filed with the Commission, an individual should appear in person at the office of the Solicitor of the Commission, 1121 Vermont Avenue, NW., Washington, DC 20425, during the hours 8:30 a.m. to 4:30 p.m., and complete an application form. Requests by mail should contain the information described in paragraph (b) of this section, together with the signature of the requester. Requests which do not contain the required information will be returned. Notice of the statutory prohibitions on use will be attached to copies of reports provided in response to a request otherwise properly filled out.

CHAPTER VIII—OFFICE OF PERSONNEL MANAGEMENT

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PART 801—VOTING RIGHTS PROGRAM

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Authority: 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

Source: 30 FR 9859, Aug. 7, 1965, unless otherwise noted.

Note: Those amendments to Appendixes A, B, and D in Part 801, which apply to Texas, appearing at 41 FR 16155, Apr. 16, 1976, are also carried in Spanish at the end of Appendix D.

Subpart A—General Provisions

§ 801.101 Definitions.

In this part:

(a) "Act" means the Voting Rights Act of 1965, Pub. L. 89-110, as amended by Pub. L. 94-73, August 6, 1975.

(b) "Applicant" means a person who presents himself to an examiner at one of the times and places designated by the OPM under § 801.202 for the purpose of being listed as eligible to vote;

(c) "Applications" means the form prescribed by the OPM under the Act for use by a person applying for listing on an eligibility list;

(d) "OPM" means the U.S. Office of Personnel Management;

(e) "Day" means a calendar day;

(f) "Eligibility list" means a list of eligible voters or supplements to a list of eligible voters, prepared by an examiner under the Act;

(g) "Examiner" means a person designated or appointed by the OPM under the Act to examine applicants for listing on an eligibility list and to prepare and maintain lists of persons eligible to vote in Federal, State, or local elections;

(h) "Hearing officer" means a person authorized by the OPM to adjudicate a challenge to a listing on an eligibility list;

(i) "Political subdivision", "vote", and "voting" have the meanings given these terms in the Act; and

(j) "Parties" means a challenger, a challenged person, and the representative of either.

[30 FR 9059, Aug. 7, 1965, as amended at 41 FR 16155, Apr. 16, 1976]

§ 801.102 Timely filing required.

A document or other paper required to be filed within a time limit specified in this part shall be delivered to the office involved before the close of business on the last day of the period, or if filed by mail be postmarked before midnight of the last day of the period.

§ 801.103 Computation of time.

In computing a period of time prescribed by this part, the day of the action or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in the State involved, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

§ 801.104 Words denoting number and gender.

In this part:

(a) Words importing the singular include and apply to several persons, parties, or things;

(b) Words importing the plural include the singular; and

(c) Words importing the masculine gender include the feminine as well.

Subpart B—Listing on Eligibility List

§ 801.201 Scope.

This subpart prescribes the times, places, and procedures for listing on an eligibility list under the Act.

§ 801.202 Times and places for filing and forms of application.

(a) The times and places designated by the OPM for filing an application in each political subdivision, and the forms of application prescribed by the OPM, shall be set out in Appendix A to this part and incorporated in and made a part of this section.

(b) The OPM shall give notice to the general public of the times and places designated under paragraph (a) of this section, to appropriate local election officials in the political subdivision, and to the attorney general of the State, by publication thereof in the FEDERAL REGISTER and by such other means as it considers appropriate.

§ 801.203 Procedures for filing application.

(a) An applicant may obtain an application at the place and during the times set out in Appendix A for the appropriate political subdivision. An application may be completed only at the place where it was obtained and shall be submitted by the applicant in person to an examiner at that place.

(b) An examiner shall review the application in the presence of the applicant to insure that all questions are answered clearly and completely. If all questions are not answered clearly and completely or if an applicant is not able personally to complete the application in whole or in part because of lack of literacy or otherwise, or has difficulty in doing so, an examiner shall orally examine the applicant and record the pertinent information on the application or otherwise assist the applicant in completing the application.

(c) After an application is completed, an examiner shall require the applicant to take the oath or affirmation prescribed on the application and to sign his name or make his mark thereon.

§ 801.204 Qualifications requirements.

The qualifications required for listing, prescribed by the OPM after consultation with the Attorney General, for use by an examiner in examining an applicant for listing on an eligibility list shall be set out in Appendix B to this part and incorporated in and made a part of this section.

§ 801.205 Action on the application.

At the time of filing the application and in the presence of the applicant, the examiner shall review the application and make such examination as is necessary to determine whether the applicant has the prescribed qualifications. If the applicant has the prescribed qualifications, the examiner shall give him a certificate, on the form prescribed by the OPM, evidencing his eligibility to vote and enter his name on an eligibility list, the form for which is prescribed by the OPM. If the applicant does not have the prescribed qualifications, the examiner shall give him a notice of ineligibility for listing, on the form prescribed by the OPM.

§ 801.206 Review of notice of ineligibility for listing.

An applicant may obtain a review of a notice of ineligibility for listing by executing the request for review contained on that notice and returning it to the examiner or by filing a written request, either personally or through a representative, with the Examiner (State Supervisor), U.S. Office of Personnel Management, in the State involved at the address set out in Appendix C to this part and incorporated in and made a part of this section. The request shall be submitted within 10 days from the date of the notice of ineligibility for listing. The request shall set forth the applicant's reason for contesting the notice of ineligibility for listing. The Examiner (State Supervisor) shall notify the applicant or his representative and the examiner concerned of his decision. When the Examiner (State Supervisor) finds the applicant has the prescribed qualifications, he shall direct the examiner concerned to give the applicant a certificate evidencing his eligibility to vote and to enter his name on the eligibility list. There is no administrative appeal from the decision of an Examiner (State Supervisor).

§ 801.207 Certification and publication of eligibility lists.

An examiner shall certify and transmit an eligibility list at least once a month to the office of the appropriate election official, with a copy to the Attorney General and the attorney general of the State. The list shall contain the name of each eligible voter listed since the last list was certified and transmitted. The list shall be made available for public inspection beginning on the last business day of the month and in any event not later than the 45th day before an election, during normal business hours, for one period of 10 consecutive days, at the place where the persons listed filed their applications as set out in Appendix A to this part, except that the list may be made available for public inspection in the same political subdivision at a place other than the place where the persons listed filed their applications when advance notice of this change is posted at the place where the persons listed filed their applications.

[30 FR 12392, Sept. 29, 1965]

Subpart C—Challenges to Listing on Eligibility List

§ 801.301 Scope.

This subpart prescribes the procedure that governs a challenge to a listing on an eligibility list under the Act.

§ 801.302 Basis of challenge.

A challenge to a listing on an eligibility list may be made only on the basis of fraud or that the challenged person does not have the prescribed qualifications.

§ 801.303 Time and place of challenge.

A challenge shall be filed within 10 days after the listing of the challenged person is made available for public inspection as provided in § 801.207 by delivering or mailing the challenge to the Examiner (State Supervisor), U.S. Office of Personnel Management, in the State involved at the address set out in Appendix C to this part.

§ 801.304 Form of challenge.

(a) A challenge shall be under oath and shall contain:

(1) The name and address of the OPM office to which it is submitted;

(2) The date of submission;

(3) The name and address of the challenger;

(4) The name and address of his representative, if any;

(5) The name and address of the challenged person and his certificate number as they appear on the eligibility list;

(6) A written statement setting forth in plain and concise language the facts constituting the grounds for challenging the listing of the challenged person on the eligibility list;

(7) Affidavits of at least two persons (one of whom may be the challenger) with their addresses, stating that they have personal knowledge of the facts that constitute the grounds for challenge and setting forth those facts in plain and concise language. Each affi-

davit shall be sworn to before a person authorized to administer oaths; and

(8) A certification that service of the challenge on the challenged person has been made as required by paragraph (b) of this section.

(b) The challenger shall file his challenge in triplicate and shall have a copy of it served on the challenged person. That service may be in person or by first-class mail properly addressed with charges prepaid.

§ 801.305 Rejection and docketing of challenge.

(a) When a challenge is not timely filed or served or does not meet the requirements of § 801.304, it shall not be entertained but shall be rejected.

(b) When a challenge is not rejected under paragraph (a) of this section, the hearing officer shall place it on the docket.

§ 801.306 Summary denial of challenge by hearing officer.

If on review of a challenge a hearing officer determines that the information, even if true and known at the time of listing, would not have disqualified the challenged person, he shall issue a decision denying the challenge without further proceeding and notify the parties of his reasons for this decision.

§ 801.307 Notice of hearing.

After docketing, and if not denied under § 801.306, the challenge shall be set for hearing. The challenger and the challenged person shall be sent a notice of the date, time, and place of the hearing and advised of the rights and duties of the parties including the right to request a subpena. The notice of hearing shall be dated and the date of the hearing shall not be less than 5 days from the date of that notice. The notice of hearing shall be served on the challenger and the challenged person either personally or by mail.

§ 801.308 Rights and duties of parties.

(a) The challenger has the burden of proceeding and proof at the hearing and shall appear personally or with a representative to prosecute the challenge, except that when a continuance is sought the challenger may appear by a representative. If a challenger fails to appear personally to prosecute the challenge, the hearing officer shall issue a decision denying the challenge or make such other disposition as is warranted by the circumstances.

(b) The challenged person has the right to appear at the hearing personally or by or with a representative, and to present witnesses and documentary evidence in his behalf.

§ 801.309 Continuance.

A request for a continuance of a hearing shall be filed with the hearing officer at the place and on the day of the hearing. The hearing officer shall not grant a continuance except under extraordinary circumstances.

§ 801.310 Hearing.

A hearing shall be open to the public and held at the time and place specified in the notice of hearing. A hearing shall be recorded by an official reporter designated by the OPM, under the supervision of the hearing officer. A party may obtain a copy of the transcript from the official reporter at a rate not in excess of the maximum rate fixed by contract between the OPM and the reporter.

§ 801.311 Powers of hearing officer.

In addition to the powers otherwise vested in a hearing officer by this subpart, a hearing officer shall have the power to:

(a) Administer oaths and affirmations;

(b) Issue and quash subpenas;

(c) Regulate the course of the hearing;

(d) Rule on offers of proof;

(e) Permit a party to withdraw from a hearing on a showing of good cause;

(f) Limit the number of witnesses whose testimony would be cumulative;

(g) Deny a challenge for failure to prosecute;

(h) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing; and

(i) Take any other action in the course of the hearing consistent with law that is necessary to carry out the spirit and intent of the Act.

§ 801.312 Witnesses.

(a) A witness shall testify under oath or affirmation and shall be subject to cross-examination.

(b) A witness who is summoned and responds is entitled to the same witness and mileage fees as are paid for like service in the courts of the United States. The party at whose instance the testimony is taken shall pay the witness and mileage fees.

§ 801.313 Subpena.

(a) On the request of a party and for good cause shown, a hearing officer may issue a subpena for the appearance of a witness or for the production of documentary evidence.

(b) A hearing officer may quash a subpena for good cause shown.

(c) The party at whose request a subpena is issued is responsible for arranging for service. The officer or person making service shall show the original subpena to the person served, read the subpena to him if he is unable to read, and deliver a copy of the subpena to him.

(d) When a U.S. Marshal or his deputy serves a subpena, he shall evidence the service by his return on the subpena. When someone other than a U.S. Marshal or his deputy serves a subpena, the person serving the subpena shall make an affidavit, stating the date, time, and the manner of service, and shall return the affidavit on, or with, the original subpena in accordance with the form thereon. When the U.S. Marshal, his deputy, or other person, as appropriate, cannot serve the subpena, he shall state his reason for the failure on the original subpena. When the person named in the subpena accepts service of the subpena in writing, no other evidence of return is necessary. The person responsible for serving a subpena shall return the original subpena, bearing or accompanied by the required return, affidavit, statement, or acceptance of service, to the officer presiding at the hearing at which the person subpenaed is required to appear.

§ 801.314 Evidence.

(a) The application of the challenged person is prima facie evidence that he has the qualifications that are stated in the application.

(b) Rules of evidence are not strictly applied but the hearing officer shall exclude irrelevant or unduly repetitious evidence.

(c) Each exhibit of a documentary character shall be submitted to the hearing officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the hearing officer.

§ 801.315 Decision.

The hearing officer who presided at the hearing, unless he has become unavailable, shall decide the case on the record. If no hearing is held, the hearing officer to whom the challenge was assigned shall decide the case on the record. The decision shall be in writing and shall state the reasons or basis for the decision. Copies of the decision shall be served on the parties. The decision shall be issued not more than 15 days after the challenge is docketed under § 801.305. The record, including the decision, shall be certified as true and complete by the hearing officer and forwarded to the Examiner (State Supervisor), U.S. Office of Personnel Management in the State involved at the address set out in Appendix C to this part. It shall be available to interested persons at that office.

§ 801.316 Action after challenge is sustained.

When a hearing officer sustains a challenge, he shall, after the courts have finally sustained his decision or the time for petitioning for a court review of that decision has expired, instruct an examiner to remove the name of the challenged person from the eligibility list and cancel that person's certificate evidencing his eligibility to vote. The examiner shall notify the challenged person, the appropriate election official, the Attorney General, and the attorney general of the appropriate State of his action.

§ 801.317 Appeal.

There is no administrative appeal from the decision of a hearing officer or from any of his rulings. A petition for review of the decision of a hearing officer may be filed in court as provided in the Act.

Subpart D—Removals From Eligibility List

§ 801.401 Scope.

The subpart prescribes the bases and procedures for removals from eligibility lists under the Act.

§ 801.402 Bases for removals.

An examiner shall remove the name of a person from an eligibility list:

(a) Pursuant to the instruction of a hearing officer under § 801.316;

(b) Pursuant to the order of a court having jurisdiction under the Act;

(c) When the examiner determines that the listed person has lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States and in accordance with the instructions concerning loss of eligibility to vote prescribed by the OPM after consultation with the Attorney General which shall be set out in Appendix D to this part and incorporated in and made a part of this section.

§ 801.403 Procedure for removals determined by examiners.

An examiner may remove the name of a listed person as authorized by § 801.402(c) only after:

(a) Giving the person a notice of the proposed removal of his name stating the reason why the removal is proposed and offering the person an opportunity to answer the notice of proposed removal in person or in writing or both within ten days after his receipt of that notice; and

(b) Considering all available evidence concerning the person's loss of eligibility to vote, including any timely answer submitted by the person.

§ 801.404 Notification of removals.

When an examiner removes the name of a person from an eligibility list he shall notify the person, the appropriate election officials, the Attorney General, and the attorney general of the State of that removal and the reason therefor.

Subpart E—Voting Complaint

§ 801.501 Scope.

This subpart prescribes the procedure for filing and processing a complaint under the Act that a person was not permitted to vote.

§ 801.502 Making a complaint.

A person who has been listed on an eligibility list or registered by an appropriate election official and who is eligible to vote but has not been permitted to vote may make a complaint regarding that denial to an examiner for the political subdivision where the denial occurred. The complaint may be either oral or in writing and must be made within 48 hours after the closing of the polls.

§ 801.503 Processing a complaint.

The examiner to whom a complaint is made shall promptly ascertain whether the complaint is well founded. If the examiner determines the complaint is not well founded he shall notify the person who complained of his determination and take no further action on the complaint. If the examiner determines that the complaint is well founded the examiner shall notify the person and the Attorney General of his determination and of the reason for that determination and furnish the Attorney General with any papers or evidence relating to the complaint.

APPENDIX A

This appendix sets out the dates, times, and places designated by the OPM for filing an application in each political subdivision, and sets out the forms of application prescribed by the OPM.

DATES, TIMES, AND PLACES FOR FILING

Offices at which applications may be filed will be open in each State in the county or parish and at the place set forth in this appendix beginning on the date specified and continuing thereafter until a closing date is given. Each office will be open Monday through Saturday (except on a legal holiday) between the hours of 8:30 a.m. and 4:30 p.m., except that the OPM may change the hours and days on which any office will be open for filing applications by posting advance notice of the change at the place set forth in this appendix.

ALABAMA

County; Place for filing; Beginning date

Autauga; (1) Prattville—U.S. Post Office; November 8, 1965; (2) Marbury—building adjacent to U.S. Post Office, intersection of Main Street and State Highway 143; February 26, 1966.

Bullock; Union Springs—U.S. Post Office, 108 E. Hardaway Street; November 7, 1978.

Chambers; Lafayette—Examiners Office, Room 218, FHA Office, County Building, 18 Alabama Avenue E.; July 30, 1984.

Choctaw; Butler—Post Office; May 31, 1966.

Conecuh; Evergreen—Holiday Inn, Room 108, Interstate 68 and Highway 83; September 2, 1980.

Dallas; (1) Selma—Federal Building; August 10, 1965; (2) Orrville—U.S. Post Office, State Highway 22; February 26, 1966.

Elmore; (1) Wetumpka—U.S. Post Office; November 8, 1965; (2) Eclectic—trailer at U.S. Post Office; February 26, 1966; (3) Elmore—trailer at U.S. Post Office; February 26, 1966.

Greene; (1) Eutaw—U.S. Post Office; November 8, 1965; (2) Boligee—trailer at U.S. Post Office; March 8, 1966.

Grenada; Grenada—Post Office Building; July 22, 1966.

Hale; (1) Greensboro—Post Office Building; August 10, 1965; (2) Moundville—Tidmore Building; February 26, 1966.

Jefferson; (1) Bessemer—Post Office Building, North 19th Street, January 24, 1966; (2) Birmingham—Post Office and Courthouse Building, 18th at 5th Avenue, North; January 24, 1966; (3) Fairfield—4412 Gary Avenue; January 24, 1966; (4) North Birmingham—Post Office Building; 2003 41st Avenue (Sayreton), Birmingham; February 14, 1966; (5) Powderly—Library Building, Birmingham Baptist College, 630 Ishkooda Road, Birmingham; February 14, 1966; (6) Wylam—trailer at Post Office, 4221 7th Avenue (Wylam), Birmingham; February 21, 1966; (7) Irondale—7949-A Crestwood Boulevard; February 26, 1966; (8) Homewood—1820 28th Avenue; February 26, 1966; (9) Tarant—1322 Main Street; March 18, 1966.

Lowndes; (1) Fort Deposit—Post Office Building; August 10, 1965; (2) Hayneville—trailer at U.S. Post Office; January 3, 1966.

Madison; (1) Canton—285 Peace Street; August 10, 1965; (2) Flora—Segrist Building opposite post office; July 20, 1966.

Marengo; (1) Demopolis—Post Office Building; August 10, 1965; (2) Putnam—trailer adjacent to Post Office; State Highway 69; March 18, 1966.

Monroe; Room 112, Monroe Motor Court South, Highway 21, Monroeville, Alabama. August 31, 1984.

Montgomery; (1) Montgomery—Post Office and Courthouse Building, corner of Church, Lee, and Moulton Streets, Rooms 332, 334, 336; October 6, 1965, to November 6, 1969; (2) Montgomery—Aronov Building, 474 South Court Street, Room 132; November 7, 1969; (3) Mount Meigs—trailer at U.S. Post Office, intersection of U.S. Highway 80 and Pike Road; February 26, 1966.

Perry; (1) Marion—Post Office Building, Room 3; August 20, 1965; (2) Uniontown—trailer at corner of West and Front Streets; March 5, 1966.

Pickens; Carrollton—U.S. Post Office, Room 200, Courthouse Square, Highway 86; September 5, 1978.

Russell; Phoenix City—U.S. Post Office, 1310 Ninth Avenue; September 26, 1978.

Sumter; Livingston—Post Office; May 3, 1966.

Wilcox; (1) Camden—Federal Building, Room 202-204; August 20, 1965; (2) Alberta—trailer at intersection of State Highway 5 and County Highway 29; March 5, 1966; (3) Pine Apple—trailer at U.S. Post Office, County Highway 59; March 5, 1966.

ARIZONA

County; Place for filing; Beginning date.

Apache; Window Rock Motor Inn, P.O. Box 1687, Window Rock, Arizona; October 31, 1986.

Navajo; Holiday Inn, P.O. Box 307, Kayenta, Arizona; October 31, 1986.

GEORGIA

County; Place for filing; Beginning date

Baker; Newton—U.S. Post Office Building; Nov. 5, 1968.

Baldwin; ASCS, Post Office Building, 110 Handcock Street, Room 206, Milledgeville, Georgia; Sept. 21, 1984.

Bulloch; Statesboro—Federal Building, Conference Room 208, 52 North Main Street; August 5, 1980.

Burke; Waynesboro-U.S. Post Office, 721 Liberty Street, Room 204; November 2, 1982.

Butts; (1) Jackson—Daughty Foundation, 221 College Street; September 4, 1982; (2) Flovilla—Flovilla Community Center, Collier Street; September 4, 1982; (3) Jenkinsburg—Cleveland BBQ Restaurant Building, Corner of Highway 42 and High Falls Road; September 4, 1982.

Calhoun; Morgan—Soil Conservation Service, Main Street, P.O. Box 113; August 5, 1980.

Chattahoochee; U.S. Post Office Lumpkin Highway, Cusseta, Georgia; Sept. 21, 1984.

Early; Blakely—Qual Motel, Room 26, U.S. 27 South; August 5, 1980.

Hancock; Sparta—Post Office Building, Broad Street; November 8, 1966.

Jefferson; Post Office Building Room 4, 131 W. Broad Street, Louisville, Georgia; Sept. 21, 1984.

Johnson; Wrightsville—U.S. Post Office, Basement Office 1, 151 South Marcus; August 5, 1980.

Lee; (1) Leesburg—Farmers Exchange Building, Second Floor; April 3, 1967, through April 30, 1969; (2) Leesburg—U.S. Post Office, intersection of State Highway 32 and U.S. Highway 19; May 1, 1969.

Meriweather; Greenville—U.S. Department of Agriculture, Agricultural Stabilization Conservation Service Office, Williams Street; August 10, 1976.

Mitchell; Camilla—FHA District Office Conference Room, Building 10A, Broad Street; August 5, 1980.

Peach; Fort Valley—U.S. Post Office Building; 300 West Church Street; November 7, 1972.

Pike; ASCS, Pike County Agriculture Building, Gwyn Street, Zebulon, Georgia; Sept. 21, 1984.

Screven; Sylvania—Post Office Building, Main and East Telephone Streets; April 3, 1967.

Stewart; Lumpkin—U.S. Department of Agriculture, Agricultural Stabilization Conservation Service Office, Meeting Room, Court House, Second Floor; August 10, 1976.

Sumter; Americus—Federal Building and Court House, Basement Conference Room 128, East Forsyth Street; August 5, 1980.

Talbot—Buice Motel, Room 2, Washington St., Talbotton, Georgia 31827, August 9, 1988.

Taliaferro; Crawfordville—Post Office; November 5, 1968.

Telfair; McRae—Postmasters Office, U.S. Post Office, 211 South Second Avenue; August 5, 1980.

Terrell; Dawson—Post Office Building, Stonewall and Lee Streets; April 3, 1967.

Tift; Tifton—FHA, Conference Room 306, Tifton County Administrative Building, 225 Tift Avenue; August 5, 1980.

Twiggs; Jeffersonville—County Office Building; State Highway 96; September 3, 1974.

Worth; ASCS, Worth County ASCS Building, 501 N. Henderson, Sylvester, Georgia; Sept. 21, 1984.

LOUISIANA

Parish; Place for filing; Beginning date

Bossier; (1) Benton—trailer at Post Office; April 3, 1967; (2) Bossier City—Lodge Hall, 1708 Scott Street; April 5, 1967 through March 17, 1969; (3) Bossier City—Post Office, 150 Benton Road, March 18, 1969.

Caddo; (1) Shreveport—Post Office and Courthouse Building, 424 Texas Street; April 3, 1967; (2) Shreveport—Terry Building, 2643 Cooper Road; April 3, 1967; (3) Shreveport; Hollywood Baptist Church; 5305 Roberts Street; April 3, 1967.

De Soto; Mansfield—trailer, at Post Office; April 3, 1967.

East Carroll; (1) Lake Providence—Post Office Building; August 10, 1965; (2) Sondheimer—trailer at Post Office Building; February 14, 1966; (3) Lake Providence—ASCS Office, 205 North Hood; October 19, 1979.

East Feliciana; (1) Clinton—Kline Building, St. Helena Street; August 10, 1965, to February 8, 1966; (2) Clinton—Trailer at U.S. Post Office; February 19, 1966; (3) Jackson—Trailer parked on Post Office grounds; February 14, 1966; (4) Slaughter—Post Office Building; February 14, 1966.

Madison; Tallulah—Post Office; August 13, 1966.

Ouachita; (1) Monroe—Post Office Building, Room 301; August 20, 1965; (2) West Monroe—I. B. Haynes Building, Cypress and Young Streets, February 14, 1966.

Plaquemines; (1) Buras—Post Office Building, August 10, 1965, through November 17, 1965, reopened August 31, 1967; (2) Belle Chasse—Post Office Building; November 18, 1965; (3) Belle Chasse—US Naval Air Station, Administration Building, Room 46, Office of the Senior Chief of Command; October 19, 1979.

Sabine; Many—U.S. Post Office Building; 525 San Antonia Avenue; September 27, 1974.

St. Helena; Greensburg—(1) Trailer at Post Office; College and Main Streets; August 19, 1972; (2) ASCS Office, Burrell Carter Building, Street Floor, South Main Street; October 19, 1979.

St. Landry; Opelousas—Chattau Motor Inn, 400 East Landry, the Bayou Room; December 5, 1979.

West Feliciana; (1) Saint Francisville—trailer at Post Office; November 3, 1965, through January 7, 1966; (2) Saint Francisville—Post Office Building; January 8, 1966; (3) Weyanoke—trailer located on State Highway 66 approximately 0.3 mile South of Weyanoke; February 14, 1966.

MISSISSIPPI

County; Place for filing; Beginning date

Amite; (1) Liberty—Walsh Building, Main Street, second floor; April 3, 1967; (2) Gloster—Ivey Building, First Street; July 29, 1967.

Benton; Ashland—Post Office Building; October 1, 1965.

Bolivar; Cleveland—Post Office Building; October 1, 1965.

Carroll; (1) Carrollton—Post Office Building, Main Street, January 4, 1966, through March 22, 1968; (2) North Carollton—Van Meter Lumber Co. Building, George Street, March 23, 1968.

Claiborne; (1) Port Gibson—McFatters Drug Store, Second Floor, 618 Main Street; April 16, 1966, through October 9, 1969; (2) Port Gibson—Federal Building, Room 111; October 10, 1969.

Clay; (1) West Point—Post Office Building; October 1, 1965; (2) Pheba—rear of Champion Grocery Store; July 21, 1967.

Coahoma; Clarksdale—Post Office Building; October 1, 1965.

Copiah; Hazelhurst—W.S. Henley Building, 122 South Lowe Street; December 13, 1983.

Covington; Collins—McLauren Building, FHA Conference Room; August 10, 1979.

De Soto; (1) Walls—U.S. Post Office; November 8, 1965, through January 4, 1966; (2) Hernando—U.S. Post Office; January 5, 1966; (3) Olive Branch—second floor above Post Office; July 22, 1967.

Forrest; (1) Hattiesburg—U.S. Courthouse, corner of Pine and Forrest Streets, Room 6; June 8, 1967; (2) Petal—108 Ninth Avenue; September 16, 1967.

Franklin; Meadville—Old Halford Building, Highway 84 East, one block from city square; April 3, 1967.

Greene; Leakesville—FHA Conference Room, New Bank Annex, Main and Lafayette Street; August 10, 1979.

Grenada; (1) Grenada—Post Office Building; July 22, 1966, through August 7, 1966; (2) Grenada—639 Union Street; August 8, 1966, through October 9, 1969; (3) Grenada—U.S. Post Office, basement, October 10, 1969; (4) Tie Plant—trailer at site of Horseshoe Store two blocks west of Tie Plant School on dirt road; September 9, 1966.

Hinds; (1) Jackson—301 Building, 301 North Lamar Street; November 8, 1965, through January 2, 1966; (2) Jackson—Post Office Building, 245 East Capitol Street; January 3, 1966; (3) Jackson—848 Lynch Street; June 22, 1966; (4) Raymond—U.S. Post Office; November 8, 1965.

Holmes; (1) Lexington—U.S. Post Office; November 8, 1965; (2) Cruger—U.S. Post Office; July 29, 1967.

Humphreys; (1) Belzoni—Post Office Building; October 1, 1965; (2) Louise—Post Office Building; June 21, 1966; (3) Isola—trailer at Post Office, August 23, 1971.

Issaquena; Mayersville—trailer at Post Office; June 15, 1967.

Jasper; Bay Springs—trailer at New Post Office; April 16, 1966.

Jefferson; Fayette—Ball Drug Store Building, Main Street; November 8, 1965.

Jefferson Davis; (1) Prentiss—Magnolia Courts, intersection of U.S. Highway 84 and State Highway 42, Units 21 through 24; August 25, 1965, through August 26, 1965; (2) Prentiss—Post Office Building; August 27, 1965.

Jones; (1) Laurel—Federal Building, Room B-8; August 20, 1965; (2) Ellisville—102 Jasmine Street; September 16, 1967.

Kemper; DeKalb—U.S. Post Office; Lobby; Seventh Street and Eighth Avenue; November 4, 1974.

Leflore; (1) Greenwood—Post Office Building; August 10, 1965; (2) Minter City—trailer on lot on northwest side of Post Office; June 6, 1967.

Lowndes; Columbus—Ramada Inn, Room 153, Highway 45 North; August 22, 1983.

Madison; Canton—285 Peace Street; August 10, 1965.

Marshall; Holly Springs—Post Office Building; August 8, 1967.

Neshoba; Philadelphia—U.S. Post Office; November 8, 1965.

Newton; (1) Newton—Post Office Building; January 4, 1966; (2) Decatur—building on Fourth Avenue across street from U.S. Post Office; July 29, 1967.

Noxubee; (1) Macon—Post Office Building, Basement, Room 1; April 16, 1966; (2) Brooksville—Jourdan Building, Front Street; July 29, 1967.

Oktibbeha; Starkville—Post Office Building, 302 University Drive; April 3, 1967.

Pearl River; Picayune—Community Recreation Center; Library; Rosa and Beech Streets; June 8, 1974.

Quitman; Marks—Corp of Engineers, Rogers Road; October 29, 1980.

Rankin; (1) Brandon—Rankin Building, intersection of U.S. Highway 80 and State Highway 18; April 16, 1966, through August 4, 1966; (2) Brandon—Nettles Drug Store Building, East Government Street; August 5, 1966 through January 31, 1971; (3) Brandon—280 Government Street; February 1, 1971.

Sharkey; Rolling Fork—102 Elm Street; June 14, 1967.

Simpson; (1) Mendenhall—Post Office Building; January 4, 1966; (2) Magee—Post Office Building, Ninth Avenue (between Eighth and Ninth Streets); January 10, 1966.

Sunflower; (1) Indianola-Post Office Building; May 2, 1967; (2) Ruleville-U.S. Post Office, 120 South Ruby Avenue; June 16, 1983.

Tallahatchie; (1) Charleston—103 Market Street; August 23, 1971; (2) Sumner—Abbey Building, East Court Square; August 23, 1971.

Tunica; Tunica—Department of Agriculture Building, Agricultural Conservation and Stabilization Service; South Side, Court Square; November 3, 1975.

Warren; Vicksburg—Post Office and Courthouse Building, Crawford and Monroe Streets; January 4, 1966.

Washington; Greenville—Room 204A Federal Building, Main Street and Poplar Street; August 8, 1983.

Wilkinson; (1) Woodville—Post Office Building; August 8, 1967, to August 24, 1967;

(2) Woodville—Odd Fellows Building; August 24, 1967.

Winston; Louisville—Post Office Building; Basement, Room 6; April 16, 1966.

Yazoo; Yazoo City, 100 South Main Street; November 2, 1971.

NEW MEXICO

County; Place for filing; Beginning date.

Chavez; Federal Building, 5th and Richardson Street, Roswell, New Mexico; December 17, 1984.

Cibola; U.S. Forest Service, Mt. Taylor Ranger District, Cibola National Forest, 201 Roosevelt, Grants, New Mexico; December 17, 1984.

Curry; Main Post Office, 417 Gidding, Room 203, Clovis, New Mexico; December 17, 1984.

McKinley; Bureau of Indian Affairs, Eastern Navajo Agency, P.O. Box 328, Crowpoint, New Mexico (25 miles north of Thoreau, 1 mile west of State Road 57); Bureau of Indian Affairs, Navajo Area Office, Federal Building, 3rd and Hill Streets, Gallup, New Mexico; December 17, 1984.

Otero; U.S. Forest Service, Lincoln National Forest, Federal Building, 11th and New York Streets, Alamogordo, New Mexico; December 17, 1984.

Sandoval; Mobile unit on parking lot behind U.S. Post Office, Camino del Pueblo Road, Bernalillo, New Mexico; U.S. Forest Service, Cuba Ranger District, San Fe National Forest, State Highway 126 and South Main, Cuba, New Mexico. December 17, 1984.

NEW YORK

County; Place for filing; Beginning date

Bronx, Kings, and New York Counties, New York; 26 Federal Plaza, Room 29108, New York, New York.

NORTH CAROLINA

County; Place for filing; Beginning date

Edgecombe; Tarboro—Room B3, U.S. Post Office, 525 Main Street, Tarboro, North Carolina; May 4, 1984.

SOUTH CAROLINA

County; Place for filing; Beginning date

Bamberg; Room 6, Farmers Home Administration, J. Carl Kershe Agriculture Building, Calhoun Street, Bamberg, South Carolina. October 10, 1984.

Calhoun; Room 5, 2nd Floor, 111 Harry C. Raysor Drive, St. Mathews, South Carolina. September 28, 1984.

Clarendon; Manning—Federal Building; November 8, 1965.

Colleton; Soil Conservation Service, Room 203, 119 Benson Street, Walterboro, South Carolina. October 10, 1984.

Darlington; Darlington—U.S. Post Office, 201 Pearl Street; November 7, 1978.

Dorchester; St. George—U.S. Post Office; November 8, 1965.

Hampton; Farmers Home Administration, 1st Floor, 1003 Elm Street, Hampton, South Carolina. October 10, 1984.

Marion; Marion—U.S. Post Office, 201 South Main Street, Conference Room; June 27, 1978.

Richland; Room 1466, Strom Thurmond FOB, 1835 Assembly Street, Columbia, South Carolina. September 28, 1984.

Williamsburg; ASCS Service Center, 208 Short Street, Kingstree, South Carolina. September 28, 1984.

TEXAS

County; Place for filing; Beginning date

Atascosa; Pleasanton—Office of USDA, 803 North Bryant; October 29, 1980.

Bee; Beeville—Agriculture Plant and Animal Inspection Service; Basement, U.S. Post Office, 111 N. St. Mary's Street; November 2, 1976.

Crockett; Ozona—Agricultural Stabilization and Conservation Office, 801 Avenue E; August 12, 1978.

Dallas; Dallas—OPM, Room 6B3, 1100 Commerce Street, Dallas, Texas, April 4, 1984.

El Paso; El Paso—2211 East Missouri Avenue, Suite N300; November 7, 1978.

Fort Bend; Richmond—Agricultural Stabilization Conservation Office; May 1, 1976.

Frio; Pearsall—Federal Building, 411 East Colorado Avenue; November 2, 1976.

Hidalgo—101 East 14th (West Entrance), Mission, Texas, 78572, (512) 585-8380, November 8, 1988.

La Salle; Cotulla—U.S. Border Patrol Station, Federal Building, North Main Street; November 2, 1976.

Medina; Hondo—Agricultural Stabilization Conservation Office; 1703 Avenue K; May 1, 1976.

Reeves; Pecos—U.S. Post Office, U.S. Attorneys Office, Room 301; May 6, 1978.

Uvalde; Uvalde—Agricultural Stabilization Conservation Office; 119 West South Street; May 1, 1976.

Wilson; Floresville—Agricultural Stabilization Conservation Office; May 1, 1976.

FORMS OF APPLICATION

ALABAMA

Front

Form approved
Budget Bureau No. 50-R359

APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1966

State of Alabama County of ——————

Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name —————— (*First*) —————— (*Middle*) —————— (*Last*)

2. Age ————

3. Address ———— (*RFD or Street Number*) ———— (*Street*) ———— (*City or Town*) ———— (*State*)

4. How long have you lived in Alabama?

5. How long have you lived at the above address? ——————————————

6. What is your precinct? ——— or ward? ———

7. Are you now (1) on active duty in the Armed Forces of the United States or the Alabama National Guard, (2) an employee of the United States or the State of Alabama, or (3) a seaman or college student? ——— ☐ Yes ☐ No

8. (a) Are you now registered to vote in Alabama? ——— ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act? ——— ☐ Yes ☐ No

9. Are you a citizen of the United States and of the State of Alabama? ——— ☐ Yes ☐ No

Former Address ——————————————

10. Have you ever been convicted of a crime other than a traffic violation? ——— ☐ Yes ☐ No

11. Have you ever been declared legally insane by a court? ——— ☐ Yes ☐ No

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.

STOP HERE. TAKE THE FORM TO THE EXAMINER

I do solemnly swear (or affirm) that the information I have provided is true and correct to the best of my knowledge, information, and belief. I do further personally swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; and that I do not believe in nor am I affiliated with any group or party which advocated or advocates the overthrow of the Government of the United States or of the State of Alabama by unlawful means.

Signature (or mark) of Applicant ————

Sworn to (or affirmed) and subscribed before me on this date ——————

Examiner ——————————————

U.S. Office of Personnel Management
CSC Form 805-A
† August 1965

Back

Do not write on this side—for use by examiner

ADDITIONAL INFORMATION ITEMS

2. If applicant shows his age to be under 21, write in his date of birth ————

4. If applicant shows that he has not lived in Alabama for one year, will he have lived in Alabama for one year by the date of the next election? ——— ☐ Yes ☐ No

If yes, write in the date residence began ——————

Former Address ——————————

5. If applicant shows that he has not lived at his present address for six months, will he by the date of the next election have:

Lived in the same county for six months? ——— ☐ Yes ☐ No

If yes, write in the date residence began ——————

Former Address ——————————

Lived in his precinct or ward for three months? ——— ☐ Yes ☐ No

If yes, write in the date residence began ——————

Former Address ——————————

Lived in the same city or town for three months? ——— ☐ Yes ☐ No

If yes, write in the date residence began ——————

7. If applicant answers yes, is his residence in Alabama and in his county for temporary purposes only? ——— ☐ Yes ☐ No

If yes, write in his occupation ————————

8. (a) If applicant shows that he is now registered to vote in Alabama, write in the county where he is registered ————

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed ———— and certificate number if available ————.

10. If applicant answers yes, name the crime —————— Where and when convicted? —————— Was the conviction for a disqualifying crime? ——— ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned with restoration of his right to vote? ——— ☐ Yes ☐ No

If so pardoned, how and when? ————

11. If applicant answers yes, has he subsequently been declared legally sane or competent by a court? ——— ☐ Yes ☐ No

If yes, when and by what court? ————

best copy available

Certificate of Eligibility Issued-No. ——— Notification of Ineligibility Issue-No. ———

GEORGIA

Front

APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965

Form approved
Budget Bureau No. 50-R359

State of Georgia County of ————

Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name ———— (*First*) ———— (*Middle*) ———— (*Last*)

2. Age ————

3. Address ———— (*RFD or Street Number*) ———— (*Street*) ———— (*City or Town*) ———— (*State*)

4. How long have you lived in Georgia?——

5. How long have you lived at the above address? ————

6. What is your election district? ————

7. Are you now on active duty in the Armed Forces of the United States? ——— ☐ Yes ☐ No

8. (a) Are you now registered to vote in Georgia? ——— ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act? ——— ☐ Yes ☐ No

9. Are you a citizen of the United States and of the State of Georgia? ——— ☐ Yes ☐ No

10. Have you ever been convicted of a crime other than a traffic violation? ——— ☐ Yes ☐ No

11. Have you ever been declared legally insane or idiotic by a court? ——— ☐ Yes ☐ No

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.

STOP HERE. TAKE THE FORM TO THE EXAMINER

I do solemnly swear (or affirm) that I am not registered to vote under any other name; that I have correctly answered the questions appearing elsewhere on this application; that the information contained elsewhere on this application is true.

Signature (or mark) of applicant ————

Sworn to (or affirmed) and subscribed before me this date ————

Examiner ————

U.S. Office of Personnel Management
CSC Form 805-G
† August 1965

Back

Do not write on this side—for use by the Examiner

ADDITIONAL INFORMATION ITEMS

2. If applicant shows his age to be under 18, will he be 18 by the date of the next election? ——— ☐ Yes ☐ No

Write in his date of birth ————

4. If applicant shows that he has not lived in Georgia for one year, will he have lived in Georgia for one year by the date of the next election? ——— ☐ Yes ☐ No

If yes, write in date residence began ————

Former address ————

5. If applicant shows that he has not lived at his present address for six months, will he have lived within the same county for six months by the date of the next election? ——— ☐ Yes ☐ No

If yes, write in the date residence began ————

Former address ————

7. If applicant answers yes, is his residence in Georgia and in his county for temporary purposes only? ——— ☐ Yes ☐ No

8. (a) If applicant shows that he is now registered to vote in Georgia, write in the county where he is registered ————

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed ———— and certificate number if available ————

10. If applicant answers yes, name the crime ———— Where and when convicted? ———— Was the conviction for a disqualifying crime? ——— ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned? ———☐ Yes ☐ No

If so pardoned, where and when? ————

11. If applicant answers yes, has he subsequently been declared legally sane or competent by a court? ——— ☐ Yes ☐ No

If yes, when and by what court? ————

Certificate of Eligibility Issued—No. ———— Notice of Ineligibility Issued—No.

LOUISIANA

Front

Form approved
Budget Bureau No. 50-R359

APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965

State of Louisiana Parish of ————

Instructions to the applicant: Please fill out this side of this form. If you need help in answering questions 1 through 13, the Examiner will help you.

1. Name ———— (*First*) ———— (*Middle*) ———— (*Last*)

2. Age ————

3. Address ———— (*RFD or Street Number*) ———— (*Street*) ———— (*City or Town*) ———— (*State*)

4. How long have you lived in Louisiana? ————

5. How long have you lived at the above address? ————

6. What is your precinct and ward? ————

7. Are you now (1) on active duty in the Armed Forces of the United States or the Louisiana National Guard, (2) an employee of the United States or the State of Louisiana, or (3) a seaman or college student? ———— ☐ Yes ☐ No

8. (a) Are you now registered to vote in Louisiana? ———— ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act? ———— ☐ Yes ☐ No

9. Are you a citizen of the United States and of the State of Louisiana? ———— ☐ Yes ☐ No

10. Have you ever been convicted of a crime other than a traffic or game violation? ———— ☐ Yes ☐ No

11. Have you ever been dishonorably discharged from or are you a deserter from the Louisiana National Guard or militia or the military service of the United States? ———— ☐ Yes ☐ No

12. Have you ever been declared legally insane or incompetent by a court? ———— ☐ Yes ☐ No

13. Are you now living in a charitable home or institution? ———— ☐ Yes ☐ No

14. What is your political party preference? ————

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.

STOP HERE. TAKE THE FORM TO THE EXAMINER

I do solemnly swear (or affirm) that I will faithfully and fully abide by all of the laws of the State of Louisiana, that I am well disposed to the good order and happiness of the State of Louisiana and of the United States, and that the information I have provided is true to the best of my knowledge and belief.

Signature (or mark) of applicant ————

Sworn to (or affirmed) and subscribed before me this date ————

Examiner ————

U.S. Office of Personnel Management
CSC Form 805-L
† August 1965

Back

Do not write on this side—For use by examiner

ADDITIONAL INFORMATION ITEMS

2. If the applicant shows his age to be under 21, will he be 21 by the date of the next election? ———— ☐ Yes ☐ No

Write in his date of birth ————

4. If the applicant shows that he has not lived in Louisiana for one year, will he have lived in Louisiana for one year by the date of the next election? ———— ☐ Yes ☐ No

If yes, write in the date residence began ————

Former Address ————

5. If applicant shows that he has not lived at his present address for six months, will he by the date of the next election have:

Lived in the same parish for six months? ———— ☐ Yes ☐ No

If yes, write in the date residence began ————

Former Address ————

Lived in this precinct for three months? ———— ☐ Yes ☐ No

If yes, write in the date residence began ————

Former Address ————

Lived in the same town or city for four months? ———— ☐ Yes ☐ No

If yes, write in the date residence began ————

Former Address ————

7. If applicant's answer is yes, is his residence in Louisiana and in his parish for temporary purposes only? ————
☐ Yes ☐ No

If yes, write in his occupation ————

8. (a) If applicant shows that he is now registered to vote in Louisiana, write in the parish where he is registered: ————

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the parish where he is listed ———— and certificate number if available ————

10. If applicant answers yes, name the crime ————

Where and when convicted? ————

Was the conviction for a disqualifying crime? ———— ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned with express restoration of the right to vote? ———— ☐ Yes ☐ No

If so pardoned, how and when? ————

11. If applicant answers yes, write in whether dishonorably discharged or a deserter? ———

If dishonorably discharged, has he been reinstated? ——— ☐ Yes ☐ No

If yes, when and where?———

If a deserter, has he returned to his command and made up his lost time? ——— ☐ Yes ☐ No

If yes, when and where?———

12. If applicant shows that he has been declared legally insane or incompetent by a court, has he subsequently been declared legally sane or competent by a court? ——— ☐ Yes ☐ No

If yes, when and what court? ———

13. If the applicant shows that he is now living in a charitable home or institution, is he disqualified? ——— ☐ Yes ☐ No

Certificate of Eligibility Issued—No. ———

Notice of Ineligibility Issued—No. ———

MISSISSIPPI

Front

Form approved
Budget Bureau No. 50-RO436

APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965

State of Mississippi, County of ——— ———

Instructions to the Applicant: Please fill out both sides of this form. If you need help in answering any question, the Examiner will help you.

1. Name ——— (*First*) ——— (*Middle*) ——— (*Last*)

2. Date of Birth ———

3. Social Security No ———

4. Are you a citizen of the United States? ——— ☐ Yes ☐ No

5. What is your present residence address and each place you have resided during the past year, stating when you lived at each place?

(a) Present address ———
From ——— to date.

(b) Previous address ———
From ——— to ———

(c) Previous address ———
From ——— to ———

(If you need additional space, use the back side of this form.)

6. What is your election district? ——— Beat ——— Precinct ——— City Ward ———

7. Are you now registered to vote in Mississippi? ——— ☐ Yes ☐ No

(a) When: ———

(b) What county: ———

(c) Address at that time: ———

8. Have you ever been convicted of a crime of murder, rape, bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy? ——— ☐ Yes ☐ No

(a) Which crime? ———

(b) When and where? ———

Has the right to vote been restored? ——— ☐ Yes ☐ No

If yes, when: ———

9. Have you ever been declared legally insane by a court? ——— ☐ Yes ☐ No

If yes, when: ———

Where: ———

(a) When and where declared competent by a court: ———

10. (a) If you have a current driver's license, state its number and the address shown thereon: ———

(b) If you own a motor vehicle, state license tag number and the county and State in which the vehicle is registered for ad valorem and road and bridge privilege tax purposes: ———

(c) If you filed an income tax return for the year immediately past, state the address on your most recent income tax return: ———

———

(d) If you own real property, state its location: ———

(e) If you are receiving homestead exemption on any real property, state the location of all such property: ———

(f) If you are currently employed, state the location of the place where you actually report for work: ———

(g) State the location of any church affiliation or location of any other religious groups of which you are a member: ———

(h) State the location of the greater amount of your personal possessions: ———

(i) If you have a telephone, state its location and number: ———

11. Do you intend to make this precinct and county your fixed habitation, for a definite or indefinite length of time, to which you intend to return whenever absent? ——— ☐ Yes ☐ No

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.

STOP HERE. TAKE THE FORM TO THE EXAMINER

I do solemnly swear (or affirm) that I am at least eighteen (18) years old (or will be before the next election in this county), and that I am now in good faith a resident of this state and of ——— election precinct in this county and that I am not disqualified from voting by reason of having been convicted of any crime named in the Constitution of this state as a disqualification to be an elector; that I have truly answered all questions propounded to me in the foregoing application for registration; and that I will faithfully support the Constitution of the United States and of the

State of Mississippi, and will bear true faith and allegiance to the same. So help me God.

Signature (or mark) of applicant ———

Sworn to (or affirmed) and subscribed before me this date ———

Examiner ———

U.S. Office of Personnel Management

Certificate of Eligibility Issued—No. ———

Notice of Ineligibility Issued—No. ———

CSC Form 805-M
Revised February 1973

Back

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ADDITIONAL INFORMATION ITEMS

2. If applicant shows his age to be under 21, will he be 21 by the date of the next election? ——— ☐ Yes ☐ No

Write in his date of birth ———

5. If applicant shows that he has not lived in Mississippi for two years, will he have lived in Mississippi for two years by the date of the next election? ——— ☐ Yes ☐ No

If yes, write in the date residence began ———

Former address ———

6. If applicant shows that he has not lived at his present address one year, will he by the date of the next election have:

Lived in the same election district for one year? ——— ☐ Yes ☐ No

If applicant is a minister or minister's wife, for 6 months? ——— ☐ Yes ☐ No

If yes, write in the date residence began ———

Former address ———

Lived in the same city, town, or village for one year? ——— ☐ Yes ☐ No

If applicant is a minister or minister's wife, for 6 months? ——— ☐ Yes ☐ No

If yes, write in the date residence began ———

Former address ———

8. (a) If applicant shows that he is now registered to vote in Mississippi, write in the county where he is registered ———

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed ———

and certificate number if available ———

10. If applicant answers yes, was the conviction for bribery, burglary, theft, arson, perjury, forgery, embezzlement, bigamy, or obtaining money or goods under false pretenses? ——— ☐ Yes ☐ No

If yes, answer the following questions:

Which crime? ———

When and where convicted? ———

Has right to vote been restored by the legislature? ———

If so restored, when? ———

11. If applicant answers yes, has he subsequently been declared legally sane or competent by a court? ——— ☐ Yes ☐ No

If yes, when and by what court? ———

Certificate of Eligibility Issued—No. ———

Notice of Ineligibility Issued—No. ———

SOUTH CAROLINA

Front

Form approved
Budget Bureau No. 50-R359

APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965

State of South Carolina County of ———

Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name ——— (*First*) ——— (*Middle*) ——— (*Last*)

2. Age ———

3. Address ——— (*RFD or street number*) ——— (*Street*) ——— (*City or town*) ——— (*State*)

4. (a) Are you a minister in charge of an organized church or the spouse of such a minister ——— ☐ Yes ☐ No

(b) Are you a teacher in a public school or the spouse of such a teacher ——— ☐ Yes ☐ No

5. How long have you lived in South Carolina ———

6. How long have you lived at the above address ———

7. What is your ward and precinct ———

8. Are you now (1) a student, (2) a seaman, (3) an employee of the United States, or (4) on active duty in the Armed Forces of the United States ——— ☐ Yes ☐ No

9. (a) Are you now registered to vote in South Carolina ——— ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act ——— ☐ Yes ☐ No

10. Are you a citizen of the United States and the State of South Carolina ——— ☐ Yes ☐ No

11. Have you ever been convicted of a crime other than a traffic violation ——— ☐ Yes ☐ No

12. Have you ever been declared legally insane, idiotic, or mentally incompetent by a court ——— ☐ Yes ☐ No

13. Are you a pauper receiving all your support from your county, town, or city government ——— ☐ Yes ☐ No

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment

STOP HERE—TAKE THE FORM TO THE EXAMINER

I hereby solemnly swear (or affirm) that the information I have provided is true to the best of my knowledge and belief and I so certify.

Signature (or mark) of applicant ———

———————————————

Sworn to (or affirmed) and subscribed before me this date ————————

Examiner ————————————————

U.S. Office of Personnel Management

CSC Form 805-S, October 1965

Back

Do not write on this side—for use by examiner

ADDITIONAL INFORMATION ITEMS

5. If the applicant shows that he has not lived in South Carolina for one year, will he have lived in South Carolina for one year by the next election (or six months if applicant is a minister in charge of an organized church or a teacher in a public school, or the spouse of either) —— ☐ Yes ☐ No

If yes, write in the date when he began to live in South Carolina ————————

Former address ————————————

6. If the applicant (other than a minister, teacher, or spouse of either) shows that he has not lived at the same address for six months, will he by the date of the next election have:

Lived in the same county for six months —— ☐ Yes ☐ No

If yes, write in the date when he began to live in the county ————————

Former address ————————————

Lived in the same city or town for four months —— ☐ Yes ☐ No

If yes, write in the date when he began to live in the city or town ————————

Former address ————————————

Lived in the same precinct for three months —— ☐ Yes ☐ No

If yes, write in the date when he began to live in the precinct ————————

Former address ————————————

8. If applicant answers yes, is his residence in South Carolina and in his county for temporary purposes ☐ Yes ☐ No

If yes, write in his occupation————————

9. (a) If applicant shows that he is now registered to vote in South Carolina, write in the county where he is registered ———

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed ————

and certificate number if available ————

11. If applicant answers yes, name the crime————————————

Where and when convicted ————————

Was the conviction for a disqualifying crime —— ☐ Yes ☐ No

If a disqualifying crime, has the disqualification been removed by pardon of the Governor —— ☐ Yes ☐ No

If so pardoned, where, when and by whom

———————————————

12. If the applicant shows that he has been declared legally insane, idiotic, or mentally incompetent by a court, has he subsequently been declared legally sane or mentally competent by a court —— ☐ Yes ☐ No

If yes, when and by what court ————

13. If the applicant shows that he is a pauper receiving all of his support from his county, town, or city, write details here ——

Certificate of eligibility issued—No. ——

Notice of ineligibility issued—No. ————

TEXAS

Front

Form approved
OMB No. 50R0592

Voting Rights Act Application

The information requested below is for the purpose of determining whether you are eligible to vote. If you are found eligible to vote, your name will be certified to appropriate state officials for addition to the official voting lists. The solicitation of this information for this purpose is authorized by the Voting Rights Act of 1965, as amended. While you are not required to respond, your cooperation is needed if you wish to be found eligible to vote.

Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name —— ———— (First) ———— (Middle) ———— (Last) Maiden surname if married woman: ————

2. Sex: ————

3. Permanent residence address: ———————— (Street and Apt. No., if any, or Route No. or location (Not P.O. Box)) ———— (City) ———— (ZIP code)

4. Election Precinct (if known): ————

5. Mailing address if different from above: ———————— (Street or P.O. box) ———— (City) ———— (State) ———— (ZIP code)

6. Birthplace: City ———— or county ———— State ———— or foreign country ————

7. Birth date: Month —— Day —— Year ——If naturalized, give court of naturalization or its location: ————————

———————————————

8. Former registration: If now registered in another Texas County: ———————— (Name of county)

Last residence address: ————————

(Street and apt. No., if any) ———— (City) ———— (State) ———— (ZIP code)

The disclosure of social security number and telephone number is voluntary. Failure to state either or both numbers will NOT result in your application being deficient. The numbers will be used only to maintain the accuracy and integrity of the registration records.

Social Security Number ———— Telephone Number ————

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.

STOP HERE.

TAKE THE FORM TO THE EXAMINER.

I do solemnly swear (or affirm) that I, the applicant, am 18 years of age or over, or will be 18 years of age or older within 60 days after applying for registration, and am a citizen of the United States, hold legal residence in this county, have met all legal requirements, and I understand that the giving of false information to procure the registration of a voter is a felony.

Signature (or mark) of applicant ————

Signature of agent* ————

*Agent must be a registered voter, and must be only: (Circle one applicable) Husband—Wife—Mother—Father—Son—Daughter

Sworn to (or affirmed) and subscribed to me this date ————

Examiner ————

U.S. Office of Personnel Management
CSC FORM 805-T
April 1976

Back

Do not write on this side—For use by examiner

Additional Information Items

Texas law states that a person convicted of a felony and not subsequently pardoned, and a person adjudicated a lunatic or idiot and not subsequently adjudicated competent, are not qualified to vote. Therefore, the following questions must be asked.

A. Have you ever been convicted of a felony: ——— ☐ Yes ☐ No

If applicant answers yes, name the crime—Where and when convicted ————

Was the conviction for a disqualifying crime: ——— ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned with restoration of his right to vote: ——— ☐ Yes ☐ No

If so pardoned, how and when ————

B. Have you ever been declared to be an idiot or a lunatic by a court: ——— ☐ Yes ☐ No

If applicant answers yes, has he subsequently been declared legally sane or competent by a court: ——— ☐ Yes ☐ No

If yes, when and by what court ————

Certificate of eligibility issued—No. ———

Notice of ineligibility issued—No. ————

(5 U.S.C. 1103; Secs. 7, 9, 79 Stat. 440, 411, 441 (42 U.S.C. 1973c, 1973g))

[30 FR 9859, Aug. 7, 1965, as amended at 53 FR 45247, Nov. 8, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting this Appendix A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

APPENDIX B

This appendix sets out the qualifications required for listing on an eligibility list.

ALABAMA

A person is qualified to be listed as an eligible voter in elections in the State of Alabama, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He is 21 years of age.

(2) He is a citizen of the United States and of the State of Alabama.

(3) He will have lived in the State of Alabama for one year, in his county for six months, and in his ward or precinct for three months by the date of the next election.

(4) He has not been convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude, or of vagrancy or being a tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector, or if so convicted he has been subsequently pardoned with restoration of his right to vote specifically expressed in the pardon.

(5) He has not been declared legally insane by a court, or if so declared he has subsequently been declared legally sane or competent by a court.

(6) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

A person who has all the above qualifications is also qualified to be listed as an eligible voter in municipal elections if he will have lived in his city or town for three months by the date of the next election.

GEORGIA

A person is qualified to be listed as an eligible voter in elections in the State of Georgia, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He will be 18 years of age by the date of the next election.

(2) He is a citizen of the United States and of the State of Georgia.

(3) He will have lived in the State of Georgia for 1 year and in his county for 6 months by the date of the next election.

(4) He has not been convicted of treason against the State, embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of Georgia with imprisonment in the penitentiary, or if so convicted he has been subsequently pardoned.

(5) He has not been declared legally insane or idiotic by a court, or if so declared he has been subsequently declared legally sane or competent by a court.

(6) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

LOUISIANA

A person is qualified to be listed as an eligible voter in elections in the State of Louisiana, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He will be 21 years of age by the date of the next election.

(2) He is a citizen of the United States and of the State of Louisiana.

(3) He will have lived in the State of Louisiana for one year, in his parish for six months, and in his precinct for three months by the date of the next election.

(4)(a) He has not been convicted of any crime punishable by imprisonment in the penitentiary, or if so convicted he has been subsequently pardoned with the express restoration of the franchise, or (b) he has not been convicted of a felony, or if so convicted he has subsequently received a pardon and full restoration of franchise.

(5) He has not been interdicted, that is, declared legally incompetent or insane by a court, or if so interdicted he has been subsequently restored to legal competency or sanity by a court.

(6) He has not been dishonorably discharged from the Louisiana National Guard or the military service of the United States, or if so discharged he has been reinstated.

(7) He is not a deserter from the military services of the United States or the militia of the State of Louisiana, when called forth by the Governor or, in time of invasion, insurrection, or rebellion, by the President of the United States, or if such a deserter, he has returned to the command from which he deserted, made good the time lost in desertion, and served out the term of his original enlistment.

(8) He is not an inmate of any charitable institution, except the Soldiers Home and the United States Marine hospital at Carville.

(9) He is not otherwise registered or listed as eligible to vote in the parish in which he applies for listing.

A person who has all the above qualifications is qualified to be listed as an eligible voter in municipal elections if he will have lived in his city or town for four months by the date of the next election.

MISSISSIPPI

A person is qualified to be listed as an eligible voter in elections in the State of Mississippi, except municipal elections, if he has all the following qualifications at the time he applies for listing and takes the required oath or affirmation.

(1) He will be 21 years of age by the date of the next election.

(2) He is a citizen of the United States.

(3) He will have lived in the State of Mississippi for two years by the date of the next election.

(4) He will have lived in his election district or his city, town, village, or municipality for one year by the date of the next election. However, if the person is a minister or the wife of a minister of the Gospel in charge of an organized church, that person is qualified if he or she will have lived in the election district for six months by the date of the next election.

(5) He has not been convicted of arson, bigamy, bribery, burglary, embezzlement, forgery, obtaining money or goods under false pretenses, perjury, or theft, or if so convicted his right to vote has been restored by the legislature.

(6) He has not been declared legally insane by a court, or if so declared he has been subsequently declared legally sane or competent by a court.

(7) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

A person who has all the above qualifications is qualified to be listed as an eligible voter in municipal elections if he will have lived in his city, town, or village for one year by the date of the next election, unless he has, within two years before the next municipal election, been convicted within the municipality of violating the liquor laws of the State or the municipality. However, if the person is a minister or the wife of a minister of the Gospel in charge of an organized church, that person is qualified to be listed as an eligible voter in municipal elections if he or she will have lived in the city, town, or village for six months by the date of the next election.

SOUTH CAROLINA

A person is qualified to be listed as an eligible voter in elections in the State of South Carolina, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He is 21 years of age.

(2) He is a citizen of the United States and of the State of South Carolina.

(3) He will have lived in the State of South Carolina for one year, in his county for six months, and in his precinct for three months by the date of the next election. However, if the person is a minister in charge of an organized church or a teacher in the public schools, or the spouse of such a minister or teacher, that person is qualified if he or she will have lived in the State of South Carolina for six months by the date of the next election.

(4) He has not been convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, larceny, challenging or accepting a challenge to duel with a deadly weapon, or crimes against the election laws, or if so convicted his right to vote has been restored by pardon.

(5) He has not been declared legally insane, idiotic, or incompetent by a court, or if so declared he has subsequently been declared legally sane or competent by a court.

(6) He is not a pauper supported at public expense.

(7) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

A person who has all the above qualifications is also qualified to be listed as an eligible voter in municipal elections if he will have lived in his city or town for four months by the date of the next election.

TEXAS

A person is qualified to be listed as an eligible voter in elections in the State of Texas if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He will be 18 years of age within 60 days after applying for registration.

(2) He is a citizen of the United States.

(3) He is a resident of the State of Texas.

(4) He has not been convicted of a felony, or if so convicted, he has been subsequently restored to full citizenship and suffrage or pardoned.

(5) He has not been declared an idiot or a lunatic by a court, or if so declared, he has been subsequently declared legally sane or competent by a court.

(6) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

EDITORIAL NOTE:: For FEDERAL REGISTER citations affecting this Appendix B, see the List of CFR Sections Affected in the Finding Aids section of this volume.

APPENDIX C

These are the addresses of each Examiner (State Supervisor), U.S. Office of Personnel Management.

ALABAMA

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia, 30303.

GEORGIA

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia, 30303.

LOUISIANA

Examiner (State Supervisor), U.S. Office of Personnel Management, Southwest Region, 610 South Street, Room 804, New Orleans, Louisiana, 70130.

MISSISSIPPI

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 802 State Street, Room 403, Jackson, Mississippi, 39201. Address effective December 1, 1979: 75 Spring Street, SW., Atlanta, Georgia, 30303.

SOUTH CAROLINA

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia, 30303.

TEXAS

Examiner (State Supervisor), U.S. Office of Personnel Management, Southwest Region, 1100 Commerce Street, Room 4C24, Dallas, Texas, 75242.

(Reorganization Plan No. 2 of 1978 (43 FR 36037))

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting this Appendix C, see the List of CFR Sections Affected in the Finding Aids section of this volume.

APPENDIX D

This appendix sets out the bases for loss of eligibility to vote and removal from an eligibility list.

ALABAMA

A person loses his eligibility to vote in elections in the State of Alabama if:

(1) He is no longer a legal resident of the State of Alabama or the county for which he is listed (a person may not vote in a county or precinct in which he is not a resident, but when a person removes from one precinct or ward to another precinct or ward within the same county, town, or city within three months before an election, he may vote in the precinct or ward from which he so removed);

(2) He dies;

(3) He is convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on wife, bigamy, living in adultery, sodomy, incest, rape, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude, or vagrancy or being a tramp, or selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector, and has not been subsequently pardoned with restoration of his right to vote specifically expressed in the pardon;

(4) He is declared legally insane by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States or the State of Alabama.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

GEORGIA

A person loses his eligibility to vote in elections in the State of Georgia if:

(1) He is no longer a legal resident of the State of Georgia or the county for which he is listed;

(2) He dies;

(3) He is convicted of treason against the State, embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of Georgia with imprisonment in the penitentiary, and has not been subsequently pardoned;

(4) He is declared legally insane or idiotic by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States or the State of Georgia.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

LOUISIANA

A person loses his eligibility to vote in elections in the State of Louisiana if:

(1) He is no longer a legal resident of the State of Louisiana or the parish for which he is listed, however, the removal from one parish to another does not deprive a person of the right to remain listed in the parish from which he has removed for the purpose of voting for district officers to be elected in a district which includes the parish to which he has removed, or for State officers, whether the parish is in the same district or not, until he has acquired the right to register or be listed and vote for such officers in the parish to which he has removed (the removal of a person from one precinct to another in the same parish does not deprive him of his right to remain listed in the parish from which he has removed until three months after the removal);

(2) He dies;

(3)(a) He is convicted of any crime punishable by imprisonment in the penitentiary and has not been subsequently pardoned with the express restoration of the franchise, or (b) he is convicted of a felony and has not subsequently received a pardon and full restoration of franchise.

(4) He is declared legally incompetent or insane by a court and has not been subsequently restored to legal competency or sanity by a court;

(5) He is dishonorably discharged from the Louisiana National Guard or the military service of the United States and has not been reinstated;

(6) He deserts from the military service of the United States or the militia of the State of Louisiana, when called forth by the Governor or, in time of invasion, insurrection, or rebellion, by the President of the United States and has not returned to the command from which he deserted, made good the time lost in desertion, and served out the term of his original enlistment;

(7) He becomes an inmate of any charitable institution, except the Soldiers Home and the United States Marine Hospital at Carville; or

(8) He loses his citizenship in the United States or the State of Louisiana.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

MISSISSIPPI

A person loses his eligibility to vote in elections in the State of Mississippi if:

(1) He is no longer a legal resident of the State of Mississippi or the election district for which he is listed;

(2) He dies;

(3) He is convicted of arson, bigamy, bribery, burglary, embezzlement, forgery, obtaining money for goods under false pretenses, perjury, or theft and has not had his right to vote restored by the legislature;

(4) He is declared legally insane by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States.

A person loses his eligibility to vote in municipal elections only, if he (1) is no longer a legal resident of his city or town, or (2) if he has, within two years before the next municipal election, been convicted within the municipality of violating the liquor laws of the State or the municipality, or (3) is at the time of the municipal election in default for taxes due the municipality for the two preceding years. Loss of eligibility to vote in a municipal election because of change of such residence or such conviction or such default in taxes does not result in loss of eligibility in any other election.

SOUTH CAROLINA

A person loses his eligibility to vote in elections in the State of South Carolina if:

(1) He is no longer a legal resident of the State of South Carolina or the county for which he is listed;

(2) He dies;

(3) He is convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, larceny, challenging or accepting a challenge to duel with a deadly weapon, or crimes against the election laws and his right to vote has not been restored by pardon;

(4) He is declared legally insane, idiotic or incompetent by a court and has not subsequently been declared legally sane or competent by a court;

(5) He becomes a pauper supported at public expense; or

(6) He loses his citizenship in the United States or the State of South Carolina.

A person loses his eligibility to vote in municipal elections only if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of residence does not result in a loss of eligibility in any other election.

(7) He fails to register in accordance with State law requiring general registration of all previously registered voters every 10th year. However, he does not lose his eligibility to vote if he has attempted to register in accordance with State law and his application was rejected without legal cause or solely because his prior registration was by listing by an Examiner.

TEXAS

A person loses his eligibility to vote in elections in the State of Texas if:

(1) He is no longer a citizen of the United States;

(2) He is no longer a resident of the State of Texas;

(3) He dies;

(4) He is convicted of a felony;

(5) He is adjudged by a court of being mentally incompetent; or

(6) He has a change of name through marriage or judgment of a court, and fails to present his registration certificate to the registrar with a signed request that his name be changed on the registration records.

A person loses his eligibility to vote in elections of the county, municipality, or other political subdivision only, if he is no longer a resident of the subdivision on the day of the election. Loss of eligibility to vote in an election of a county, municipality, or other subdivision does not result in loss of eligibility in any other elections.

TEXAS

Forma Aprobada OMB No. 50R0592

Solicitud Para Ejercer El Derecho Del Voto

La información que se le pide a continuació es con el objeto de determinar si usted es elegible para votar. Si se encuentra que usted es elegible, su nombre será certificado

para que los oficiales apropiados del Estado lo agreguen a las listas oficiales para la votación. La autorización para solicitar la siguiente información está basada en el Acta del Derecho de Votar, enmendada. No se le exige que responda a las preguntas que se le harán a continuación, pero su cooperación es necesaria si usted desea que se le clasifique elegible para voter.

Instrucciones para el solicitante: Haga el favor de llenar los espacios en blanco con la información que se le pide. Si necesita ayuda para contestar alguna pregunta, el examinador le ayudara.

1. Nombre ——— (Primer nombre) (Segundo nombre) (Apellido)

Si es casada escriba equi su apellido de soltera ———

2. Sexo Masculino: ☐ Femenino: ☐

3. Direccion permanente: ——— (Calle y no. de su apartamento, calle rural o localida (no caja postal) Ciudad ——— Zip code ———

4. Lugar donde votara: (si lo sabe) ———

5. Direccion postal si es diferente de la mencionada arriba: Calle o Apartado Postal ——— Ciudad ——— Estado ——— Zip code ———

6. Lugar de nacimiento: Ciudad ——— o Condado ——— Estado ——— o Pais ———

7. Fecha de nacimiento: Mes ——— Dia ——— Ano ——— Si usted es Americano naturalizado, de el nombre de la corte o la localidad donde se naturalizo:———

8. Registracion previa: Si Ud. esta actualmente registrado en otro condado de Texas, de el nombre de ese condado ———

Cual fué su última dirección: ——— (Ciudad) ——— (Estado) ——— (Zip code)

Es voluntario declarar su número de Seguro Social y su número de teléfono. Si Ud. prefiere declarar sólo uno de esos números o ninguno de los dos, está bien, eso NO será motivo para que su solicitud se considere incompleta. Esos números solo servirán para mantener la exactitud y la integridad de los archivos de éste registro.

Número de Seguro Social ———

Número de su teléfono ———

Si usted, sabiéndolo, da información falsa en esta solicitud, está cometiendo un crimen Federal que puede ser castigado con una multa o con encarcenlamiento.

PARE AQUI.
LLEVE ESTA FORMA AL EXAMINADOR.

Solemnemente juro (o afirmo) que yo, el solicitante, soy de 18 años de edad o mayor, o que cumpliré 18 años dentro de 60 diás después de la fecha en que he presentado esta solicitud, y que soy ciudadano de los Estados Unidos, mantengo residencia legal en este Condado, he llenado todos los requisitos legales y entiendo que el hecho de dar información falsa con el objeto de que se me registre para la votación es un crimen.

Firma (o marca) del solicitante ———

Firma del agente* ———

*El agente debe estar registrado para votar y debe ser: (Encierre en un círculo la palabra correspondiente)

Esposo—Madre—Padre—Hijo—Hija

Jurado (o afirmado) y firmado en mi presencia en esta fecha:———

Examinador ———

Officina de Administracion de Personal de
los Estados Unidos de America
CSC Form 805-T
abril 1976

INFORMACION ADICIONAL

La ley del Estado de Texas dice que una persona que ha sido convicta por haber cometido un crimen y que no ha sido perdonada, o una persona que ha sido declarada lunática o idiota y por lo tanto no se le considera competente, no está calificada para votar. Por esta razón las siguientes preguntas deben ser contestadas.

A. Ha sido Ud. alguna vez convicto por haber cometido un crimen: Si ☐ No ☐

Si su respuesta es si, diga cual fué el crimen ———

Dónde y cuando fué usted convicto ———

Fué esta convicción por un crimen que lo descalifica para votar? Si ☐ No ☐ ———

Si su respuesta a la pregunta anterior es afirmativa, ha sido usted perdonado y se le ha devuelto su derecho de votar? Si ☐ No ☐

Si ha sido perdonado, dónde y cuándo? ———

B. Ha sido usted declarado por una corte idiota o lunático? Si ☐ No ☐

Si su respuesta es si, fué usted despues declarado por una corte sano o competente? Si ☐ No ☐

Si su respuesta es si, diga cuando y en cual corte ———

Número del certificado de elegible ———

Número del certificado de inelegible ———

APENDICE B

Este apéndice enumera las calificaciones que re requiren para sercolocado en una lista de personas elegibles para votar.

TEXAS

Una persona es considerada calificada para ser puesta en la lista de elegibles para votar en el Estado de Texas si llena los siguientes requisitos al momento de hacer su solicitud y si presta juramento (o afirmación) que se requiere.

(1) Deberá cumplir 18 años de edad dentro de0 dias despues de haber hecho la solicitud.

(2) Debe ser ciudadano de los Estados Unidos.

(3) Debe ser residente del Estado de Texas.

(4) No ha sido convicto por un crimen, o si fué convicto alguna vez, se le han desde entonces restaurado sus derechos de ciudadanía y sufragio o ha sido perdonado.

(5) No ha sido declarado por la corte come idiota o lunático, y si lo fué, ha side despues declarado legalmente sano o competente por una corte.

(6) No está registrado para votar en ningún otro lugar de este Condado.

APENDICE D

Este apéndice enumera las razones por las cuales puede usted perder el derecho a votar o por las cuales se le puede quitar de la lista de elegibles para votar.

TEXAS

Una persona pierde su derecho a votar en las elecciones en el Estado de Texas si:

(1) Ha dejado de ser ciudadano de los Estados Unidos;

(2) Ha dejado de ser un residente del Estado de Texas;

(3) Ha fallecido;

(4) Ha sido convicto por haber cometido un crimen;

(5) Ha sido declarado en la corte de ser mentalmente incompetente;

(6) Ha cambiado de nombre por razones de matrimonio o por otros procedimientos legales en una corte y ha fallado de presentar el certificado correspondiente al encargado, dicho certificado debe ser acompañado de una petición firmada pidiendo que su nombre sea cambiado en los archivos de registro para votar.

Una persona pierde su derecho a votar en las elecciones del condado, la municipalidad o cualquier otra sub-division politica solamente, si esa persona ha dejado de ser residente de ese lugar el dia de la eleccion. La pérdida de su elegibilidad para votar en una eleccíon de un condado, municipalidad o cualquier otra subdivisión politica no resulta en la pérdida del derecho a votar en otras elecciones.

Autoridad: Los requisitos enumerados en esta Parte 801 emitidos bajo las secciones 7, 9, 79, Stat. 440; 42 U.S.C. 1973e, 1973g.

EDITORIAL NOTE: FOR FEDERAL REGISTER citations affecting this Appendix D, see the List of CFR Sections Affected in the Finding Aids section of this volume.

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PART 1010—CIVIL RIGHTS PROGRAM REQUIREMENTS OF CSA GRANTEES; CIVIL RIGHTS REGULATIONS

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1010.40-1 General.
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APPENDIX A TO PART 1010—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES FUNDING AUTHORITIES UNDER THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED
APPENDIX B TO PART 1010—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

Sec.
APPENDIX C TO PART 1010—APPLICATION OF PART 1010 TO FEDERAL FINANCIAL ASSISTANCE OF COMMUNITY SERVICES ADMINISTRATION

AUTHORITY: Secs. 602, 624, 603, 223 and 244 (8) of The Economic Opportunity Act, of 1964, as amended 78 Stat. 528, 42 U.S.C. 2942; 86 Stat. 696, 42 U.S.C. 2971C; 78 Stat. 530, 42 U.S.C. 2943; 81 Stat. 701, 42 U.S.C. 2837; secs. 602 and 603, Title VI, Civil Rights Act of 1964, 78 stat. 252, 42 U.S.C. 2000d-1; 78 Stat. 253, 42 U.S.C. 2000d-2; E.O. 11764, 28 CFR Parts 42 and 50.3.

SOURCE: 44 FR 70145, Dec. 6, 1979, unless otherwise noted.

Subpart A—General

§ 1010.1-1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and Section 624 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971c, to the end that:

(a) No person on the basis of race, color, or national origin, be excluded from participation in or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Community Services Administration (CSA).

(b) No person on the ground of sex be excluded from participation in, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

(c) No person with responsibilities in the operation of a program receiving financial assistance under the Economic Opportunity Act of 1964, as amended will discriminate with respect to any such program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

§ 1010.1-2 Applicability.

(a) This part applies to all grantees and their delegate agencies receiving financial assistance from CSA. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Any assistance to any individual who is the ultimate beneficiary under any such program.

(b) This part also applies to any program which is funded and administered by CSA with funds transferred from another Federal agency to CSA.

§ 1010.1-3 Definitions.

As used in this part—

(a) "CSA" means the Community Services Administration, and includes all of its organizational units.

(b) "Director" means the Director of the Community Services Administration.

(c) "Associate Director for Human Rights" means the CSA official responsible for implementing and enforcing CSA's Civil Rights program.

(d) "Responsible CSA official" with respect to any program receiving Federal financial assistance means the Director or other official of CSA who by law or by delegation has the principal responsibility within CSA for the administration of the law extending such assistance.

(e) "Title VI" means Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-2000d-4.

(f) "United States" means the states of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Cana Zone, and the Territories and possessions of the United States, and the term "State" means any one of the foregoing.

(g) "Federal financial assistance" includes (1) grants, loans, or donation of Federal funds, (2) the grant or donation of Federal property and interest in property, (3) the detail of Federal personnel, (4) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, at a nominal consideration, or at a consideration which is reduced of the purpose of assisting the grantee, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance.

(h) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through an employee of the grantee or provided by others through contracts or other arrangements with the grantee, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions whch must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal resources or such non-Federal resources.

(i) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein. The provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(j) "Grantee" means any state, political subdivision, instrumentality of any state or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any state, to whom Federal financial assistance is extended directly or through another grantee. Such term does not include any ultimate beneficiary under a federally assisted program.

(k) "Grantee Board" means the entity responsible for the administration of funds received pursuant to the Economic Opportunity Act of 1964, as amended.

(l) "Applicant" means one who submits an application, request, or plan required to be approved by CSA or by a grantee as a condition of eligibility for Federal financial assistance. The term "application" means any such application, request or plan.

(m) In complying with the requirements of this part, it will be necessary to refer to persons by race, color or national origin. The following designations will be used by grantees in reporting participant characteristics:

(1) Black, not of Hispanic origin. A person having origins in any of the black racial groups of Africa;

(2) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(3) Asian or Pacific Islander. A person having origins in any of the original people of the Far East, Southeast Asia; the Indian Subcontinent, or the Pacific Islands. The area includes, for example, China, India, Japan, Korea, the Philipine Islands, and Samoa;

(4) American Indian or Alaskan Native. A person who has origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition;

(5) White, not of Hispanic origin. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(6) Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis; and

(7) Paragraphs (m) (1) through (7) of this section are in conformity with Directive #15 of the Office of Federal Statistical Policy and Standards which replaced OMB Directive A-46.

Subpart B—Discrimination Prohibited

§ 1010.10-1 General.

(a) No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefit of or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

(c) No person with responsibilities in the operation of a program receiving financial assistance under the Economic Opportunity Act of 1964, as amended, will discriminate with respect to any such program because of race, creed, color, national origin, sex, political affiliation or beliefs.

(d) An individual shall not be deemed subjected to discrimination by reason of his/her exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, sex or national origin different from his/hers, for example, programs funded exclusively to serve on-reservation Indians.

§ 1010.10-2 Discrimination prohibited—Specific discriminatory actions prohibited.

(a) A grantee under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, sex, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different from that provided to others under the program;

(3) Subject an individual to segragation or separate treatment in any manner related to his/her receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services, or otherwise afford him/her an opportu-

nity to do so which is different from that afforded others under the program, including the opportunity to participate in the program as an employee to the extent that employment practices are covered in § 1010.10-3; or

(7) Deny any person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(b) A grantee, in determining the type of services, financial aid, or other benefits or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under or on such program, or the class of individuals to be afforded an opportunity to participate in any such program may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, or national origin, or have the effect of substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

(c) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the ground of race, color, sex, or national origin or with the purpose or effect of substantially impairing the accomplishment of the objectives of this part.

(d) The enumeration of specific forms of prohibited discrimination in this subpart does not limit the generality of this subpart's prohibition.

(e) In administratering a program in which the grantee has previously discriminated against persons on the ground of race, color, sex, or national origin, the grantee must take affirmative action to overcome the effects of prior discrimination. Even in the absence of such prior discrimination, a grantee, in administrating a program may take affirmative action to overcome the effects or conditions which result in limiting participation by persons of a particular race, color, sex, or national origin.

§ 1010.10-3 Discrimination prohibited—Employment practices.

(a) Where a primary objective of the Federal financial assistance is to provide employment, a grantee may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion or transfer, rates of pay or other forms of compensation, and use of facilities). This prohibition applies where a primary objective of the Federal financial assistance is:

(1) To reduce unemployment or to help individuals through employment to meet subsistence needs;

(2) To assist individuals through employment to meet expenses incident to the commencement or continuation of their education or training;

(3) To provide work experience which contributes to the education or training of individuals; or

(4) To provide remunerative activity to individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market.

(b) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulations, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(c) Where a program receives financial assistance under the Economic

Opportunity Act of 1964, as amended, a grantee may not (directly or through contractual or other arrangements):

(1) Subject an individual to discrimination on the basis of sex in its employment practices in connection with the program; and

(2) In connection with any positions funded in whole or in part with funds made available under the Act, subject an individual to discrimination on the basis of race, creed, color, national origin, sex, political affiliation or beliefs.

(d) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it.

(e) Enforcement of Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part with respect to covered employment practices shall not be superseded by state and local merit systems relating to the same grantee.

Subpart C—Responsibilities of Grantee

§ 1010.20-1 Assurances.

(a) *Economic Opportunity Assurance.* Every application for financial assistance for a program under the Economic Opportunity Act of 1964, as amended, as well as every grant, contract, or agreement with respect to such program shall specifically provide:

(1) That no person with responsibilities in the operation of such programs will discriminate with respect to any such program on the basis of race, creed, color, national origin, sex, political affiliation or beliefs; and

(2) That compliance with such provision shall be determined by this part.

(b) *General.* Every application for Federal financial assistance to a program to which this subpart applies shall, as a condition to the extension of any Federal assistance, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by this part. In the case where Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the grantee, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose involving the provision of similar services and benefits, or for as long as the grantee retains ownership or possession of the property, whichever is longer. The Associate Director for Human Rights or his/her designee shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(c) *Real property.* In the case of real property, structures or improvements thereon, or interest therein, which were acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the grantee retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is acquired or improved with Federal financial assistance, the grantee shall agree to include a covenant assuring nondiscrimination in any subsequent transfer of such property. Where the property is obtained from the Federal government, such covenant may also include a condition coupled with a right to be reserved by CSA to have title to the property revert to the Federal government in the event of the breach of the covenant where at the discretion of the Associate Director for Human Rights or his/her designee such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the Associate Director for Human Rights or his/her designee may agree, upon written request of the transferee to accomplish such financing, and upon such conditions as he/she deems appropriate, to forebear the exercise of such right to have title revert to CSA for so long as the lien of such mortgage or other encumbrance remains effective.

(d) *Elementary and Secondary Schools.* In the case of any program for the benefit of elementary or secondary school students which, as a necessary part of such program, utilizes to a substantial extent the facilities of an elementary or secondary school or school system, the requirements of § 1010.20-1 shall be deemed to be satisfied if such school or school system:

(1) Is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order; or

(2) Submits a plan for the desegregation of such school or school system which the Department of Health, Education and Welfare determines is adequate to accomplish the purposes of Title VI and this part within the earliest practicable time, and provides assurances that it will carry out such plan. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform with such final order, including any future modification of such order.

The provisions of this paragraph do not apply to programs for pre-school children.

(e) *Institutions of Higher Education.* In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this paragraph shall extend to admission practices and to all other practices relating to the treatment of students. The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the institution establishes, to the satisfaction of the Associate Director for Human Rights or his/her designee that the institution's practices in designated parts or programs of the institution in no way affect the beneficiaries of or participants in the programs for which Federal financial assistance is sought. If in any such case, the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1010.20-2 Required grantee civil rights program.

(a) To be eligible for funding, each CSA grantee shall have an affirmative action plan approved by the Associate Director for Human Rights or his/her designee which shall include the following:

(1) A written Equal Opportunity Policy;

(2) An Equal Opportunity Committee;

(3) An Equal Opportunity Officer;

(4) A written discrimination complaint procedure at a minimum incorporating the procedures in Subpart D, § 1010.30-3.

(5) A data-collection, record-keeping and reporting system to provide the information required by this part.

(6) A comprehensive self-analysis, which shall include a comparison of the provision of benefits on the basis of race, sex, and national origin as to

the eligible racial, sexual, and national origin population.

This analysis shall also include a comparison of the grantee's employment by race, sex and national origin to the racial, sexual, and national origin characteristics of the relevant workforce. Where significant disparities are found, the recipient shall determine the reasons and, if appropriate, set forth corrective actions.

(b) The recipient of CSA financial assistance is required to implement its CSA-approved affirmative action plan and to ensure compliance with this part. At a minimum, the following requirements must be met:

(1) Each grantee board shall formally adopt an Equal Opportunity Policy and establish an Equal Opportunity Committee which shall reflect the composition of the board in regard to representation of the public, private and low-income sectors.

(2) The Equal Opportunity Committee shall review the determinations of the Equal Opportunity Officer (EOO) regarding complaints of discrimination and shall oversee the enforcement of the grantee's civil rights program.

(3) Grantees shall have at least one EOO, who shall report directly to the Board of Directors on EO matters, with responsibility for the civil rights program required by this part and such additional personnel as are necessary to carry out the requirements of this part. The EOO shall not be the Executive Director, Deputy Director or Personnel Officer. The Regional Human Rights Chief will make the determination whether the EOO will be full-time or part-time.

(4) The EOO shall undergo training as prescribed by CSA. All expenses incurred by such training shall be borne by the grantee.

(5) The EOO shall be granted the authority to carry out the following activities:

(i) Receive and attempt to resolve complaints of discrimination;

(ii) Provide aggrieved persons with information and advice on equal opportunity procedures including local, state, and Federal redress procedures, and notification of the filing deadlines for Equal Employment Opportunity Commission complaints, where applicable;

(iii) Take other steps which may assist in the resolution of a problem, prior to the filing of a formal complaint;

(iv) Assist, if requested by a complainant, in preparing a formal complaint to CSA of alleged discrimination based on race, color, creed, sex, national origin, age, handicap, political affiliation or beliefs; and

(v) Provide staff leadership in developing, implementing, and evaluating the grantee's Affirmative Action Plan (AAP).

(6) Grantees shall display, in conspicuous places, posters which summarize the rights of the employees, program participants and beneficiaries under Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part. Such posters shall describe the functions of the EOO and the procedures for filing complaints of discrimination, including the right to complain directly to CSA.

(7) In addition to the posters, each grantee shall make available information regarding the provisions of this part and its applicability to the program under which the grantee receives Federal financial assistance and make such information available in such manner as the Associate Director for Human Rights or his/her designee finds necessary to apprise such persons of the protections against discrimination assured them by Title VI, the Economic Opportunity Act, and this part.

(8) Grantee shall make its posters and other material available in a language other than English where a significant number or proportion of the population eligible to be served or likely to be directly affected a by Federally assisted program need services in another language. The Associate Director for Human Rights or his/her designee will determine when publication in a language other than English is necessary.

§ 1010.20-3 Data and information requirements.

(a) Each grantee shall collect, maintain, and, upon request of CSA, submit the information set forth in this section. All of the information set forth shall be collected unless the Associate Director for Human Rights or his/her designee grants a written exemption to any information requirement for good cause shown by the grantee.

(b) To the extent that CSA has supplied or prescribed forms for the following information such forms shall be utilized by the grantee.

(c) Grantees shall collect and maintain the following information:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of race, color, sex or national origin.

(2) The population eligible to be served by race, color, sex or national origin.

(3) The location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying services to any persons on the basis of race, color, sex or national origin.

(4) The present or proposed membership by race, color, sex and national origin in any policy making or advisory body which is an integral part of the program.

(5) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary adverse impact on persons on the basis of race, color, sex or national origin.

(6) Data regarding covered employment, including use or planned use of bilingual public contact employees serving the beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English.

(7) A brief description of any of its pending applications to other Federal agencies for assistance and of assistance being provided at the time of the application or requested report.

(8) A statement describing any civil rights compliance reviews regarding the applicant or grantee conducted during the two-year period before the applicant or report, and the results of those reviews.

(d) In addition to the data and information required in § 1010.20-3(c)(1)-(8), each applicant or grantee shall:

(1) Promptly notify CSA of any lawsuits filed against the applicant or grantee alleging discrimination on the basis of race, color, sex or national origin,

(2) Maintain a log of complaints under Title VI and this part identifying each complainant by race, color, sex or national origin, the nature of the complaint, the date the complaint was filed, the date the grantee's investigation was completed and the disposition and the date of disposition; and

(3) Where CSA determines that it is necessary and appropriate for the enforcement of Title VI or this part, additional data such as demographic maps, the racial or sexual composition of affected neighborhoods, or census data will be required, however, only to the extent that the information is readily available or the requirement can be complied with by reasonable effort.

(e) *Access to Sources of Information.* Each grantee shall permit access by the responsible CSA official or his/her designee during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a grantee is in the exclusive possession of any other agency, institution or person and that agency, institution or person fails or refuses to furnish this information, the grantee shall set forth in writing the efforts it has made to obtain the information and provide this information to the CSA official requesting such information.

Subpart D—Conduct of Investigations and Reviews

§ 1010.30-1 Pre-award compliance reviews.

(a) Prior to approval of financial assistance, all applications for financial assistance shall be reviewed by the Associate Director for Human rights or his/her designee, who will make a written determination as to whether the applicant is in compliance with Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and the requirements of this part. The basis for such a determination shall be submission of an assurance of compliance and a review of the compliance data and information submitted by the applicant, and any relevant compliance review reports on file with CSA. Where a determination cannot be made from this data, the Office of Human Rights will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, communicating with local government officials or protected class organizations and field reviews.

(b) No application shall be approved unless it is determined that the applicant is in compliance with Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part or the applicant has agreed in writing to take necessary enumerated steps within a stated period of time to come into compliance. Such an agreement must be approved by the Associate Director for Human Rights and made a part of the conditions of the grant.

(c) If the grantee fails or refuses to enter into such an agreement, the Associate Director for Human rights shall notify the recipient and the Assistant Attorney General for Civil Rights in writing of:

(1) The preliminary findings setting forth the reasons for the applicant's noncompliance;

(2) The actions necessary to come into compliance; and

(3) The fact that the applicant has 10 days to come into compliance and that the applicant may provide during this time a documentary submission responding to, rebutting, or denying the allegations raised in the notice to them.

(d) If within this 10-day period the applicant has not complied with the actions set forth to come into compliance, or voluntary compliance has not been secured, or has not satisfactorily rebutted the allegations, the Associate Director for Human Rights shall make a formal determination of compliance, notify the grantee and the Assistant Attorney General for Civil Rights, and institute proceedings under Subpart E.

(e) CSA shall defer action on applications for assistance during the pendency of enforcement proceedings under this section.

§ 1010.30-2 Post-award review.

(a) Each grantee shall submit an annual report which will contain the compliance information specified in § 1010.20-3.

(b) The Office of Human Rights will periodically conduct compliance reviews of selected grantees.

(c) The Office of Human Rights shall seek to review those grantees which have the greatest disparity in the delivery of services or which appear to have the most serious employment problems as defined by § 1010.10-3. Selection for review shall be made on the basis of the following factors:

(1) The relative disparities between the percentage of the eligible minority or female populations, if appropriate, receiving program benefits and the percentage of eligible minorities or females, if appropriate, in the eligible population.

(2) The relative disparities between the percentage of minorities and females in the relevant labor market and the percentage of minorities and females employed by the grantee;

(3) The number and nature of compliants filed against a grantee either with CSA or other Federal agencies;

(4) The scope of problems revealed as a result of an investigation of a compliant filed with CSA and other appropriate Federal, state and local civil rights agencies; and

(5) The amount of assistance provided to a grantee.

(d) Within 15 days of the selection of a grantee for review, the grantee shall be notified that it has been selected for a compliance review and the review shall be initiated.

(e) The grantee shall be informed that it may at any time prior to CSA's findings make a documentary submission responding to, rebutting, or denying allegations raised in the course of the compliance review.

(f) Within 180 days for the initiation of a compliance review, the Associate Director for Human Rights or his/her designee shall notify the grantee in writing of:

(1) Preliminary findings;

(2) Recommendations for achieving voluntary compliance, where appropriate; and

(3) The opportunity to engage in voluntary compliance negotiations, where appropriate.

The Associate Director for Human Rights or his/her designee shall notify the Assistant Attorney General for Civil Rights at the same time he/she notifies the grantee of any matter where recommendations for achieving voluntary compliance are made.

(g) If within 50 days of CSA's recommendations for achieving voluntary compliance the recommendations have not been agreed to, or voluntary compliance has not been secured, or the preliminary findings have not been shown to be false the Associate Director for Human Rights shall make a formal written determination of noncompliance. At the same time the grantee is notified of this determination, it shall be forwarded to the Assistant Attorney General for Civil Rights. This determination shall be made no later than 14 days after the conclusion of the 50-day negotiation period.

(h) Where the Associate Director for Human Rights makes a formal determination of noncompliance, the grantee and the Assistant Attorney General shall be immediately advised in writing of the determination and of the fact that the grantee has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Associate Director shall institute proceedings under Subpart E.

(i) All agreements to come into voluntary compliance shall be in writing, shall set forth the specific steps the grantee has agreed to take, and shall be signed by the Associate Director for Human Rights or his/her designee and an official of the grantee with authority to legally bind the grantee.

§ 1010.30–3 Complaint investigations.

(a) *Local Complaint Procedures.* (1) *Submission of an Equal Opportunity Complaint.* Any person who believes he/she has encountered discrimination because of race, color, creed, sex, national origin, age, political affiliation, beliefs or handicap may first file a complaint with the Equal Opportunity Officer (EOO) of the grantee not more than 180 calendar days after the act complained of occurred. A copy of the complaint shall be immediately mailed to the Associate Director for Human Rights or his/her designee by the Equal Opportunity Officer.

(2) *Resolution and Decision by the Grantee.* (i) The EOO shall make every effort to resolve the complaint informally. The EOO shall, if requested by the complainant, assist in discussions with any party to the complaint and may take other steps which may assist in the resolution of the complaint.

(ii) The aggrieved person has the right to be accompanied, represented and advised by a representative or attorney of his/her choice. If the aggrieved person or the representative is an employee of the agency, he/she shall be given a reasonable amount of working time to prepare and present his/her request for a resolution of the complaint. These procedures shall be included in the grantee's personnel policies and must be approved by the CSA Office of Human Rights.

(iii) The EOO shall have 21 days to attempt to resolve the complaint before CSA will begin processing the complaint, if it has been filed with CSA or CSA otherwise assumes jurisdiction.

(iv) The EOO shall be given access within the agency to any information necessary for resolving the complaint.

(v) The EOO shall inform the complainant of the right to file a formal complaint with CSA and any other appropriate Federal, state and local civil rights agencies.

(vi) Nothing in this subpart should be construed to mean that a complainant cannot file a complaint directly with CSA at any time.

(3) *Reports on Grantee Efforts at Resolution.* (i) When the EOO has

completed attempts to resolve the complaint, a report shall be prepared, setting out a summary of the complaint, the preliminary inquiry and the disposition of the complaint, indicating the basis for that disposition.

(ii) Copies of the report shall be given to the grantee's board, the complainant and to the Office of Human Rights. A report shall be forwarded within 21 days of the filing of a complaint, regardless of the disposition of the complaint.

(b) *CSA Complaint Procedures.* (1) *Filing of Complaint with CSA.* (i) If the result of the procedures outlined in § 1010.30-3(a) is unsatisfactory to the complainant, a formal complaint may be filed within 10 calendar days of receipt of the report of the EOO.

(ii) A complainant may file a complaint directly with CSA. However no complaint will be investigated if not received by CSA or the local EOO within 180 days of the date of the alleged discrimination unless the time for filing is extended, for good cause, by the Associate Director for Human Rights or his/her designee. If a complaint is filed with the local EOO and CSA, CSA shall not begin processing the complaint until the 21 days set forth in § 1010.30-3(a)(2)(iii) have expired.

(2) Within 25 days of receipt of a complaint, the Associate Director for Human Rights or his/her designee shall:

(i) Ascertain whether CSA has jurisdiction over the complaint;

(ii) If it is determined that CSA has jurisdiction, notify the grantee involved of the complaint and initiate the investigation; and

(iii) If it is determined that CSA does not have jurisdiction, notify the complainant of that fact in writing.

(3) The grantee shall be notified that it may at any time prior to CSA's findings make a documentary submission responding to, rebutting, or denying allegations raised in the course of the complaint investigation.

(4) Within 180-days of the initiation of a complaint investigation, the Associate Director for Human Rights or his/her designee shall notify the grantee in writing of:

(i) the preliminary findings;

(ii) recommendations for achieving voluntary compliance, where appropriate; and

(iii) the opportunity to engage in voluntary compliance negotiations, where appropriate.

The Associate Director for Human Rights or his/her designee shall notify the Assistant Attorney General for Civil Rights at the same time he/she notifies the grantee of any matter where recommendations for achieving voluntary compliance are made.

(5) If within 50 days of CSA's recommendation for achieving voluntary compliance, the recommendations have not been agreed to, voluntary compliance has not been secured, or the preliminary findings have not been shown to be false the Associate Director for Human Rights shall make a formal written determination of noncompliance. At the same time the grantee is notified of this determination, it shall be forwarded to the Assistant Attorney General for Civil Rights. This determination shall be made no later than 14 days after the conclusion of the 50-day negotiation period.

(6) If the Associate Director for Human Rights makes a formal determination of noncompliance, the grantee and the Assistant Attorney General for Civil Rights shall be advised in writing that the determination has been made and the grantee has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been secured within the 10-day period, the Director shall institute proceedings under Subpart E.

(7) All agreements to come into voluntary compliance shall be in writing, shall set forth the specific steps the grantee has agreed to take, and shall be signed by the Associate Director for Human Rights and an official of the grantee with authority to legally bind the grantee.

§ 1010.30-4 Back-pay award.

CSA grant funds may lawfully be used to cover back-pay awards resulting from judgments or settlements arising from complaints of discrimination. However, CSA reserves the right to determine whether to allow the program cost on a case-by-case basis after the expenditure of grant funds so as not to influence the decision of the grantee to settle. Consideration will be given to such factors as the grantee's conduct subject to the claim of discrimination, and whether the complainant's salary is funded by CSA.

§ 1010.30-5 Complaints filed with State and local commissions or the Equal Employment Opportunity Commission.

When a complaint is filed with CSA and with the Equal Employment Opportunity Commission or another Federal, state or local agency, the Associate Director for Human Rights or his/her designee shall communicate with the other agency and shall arrange to handle the complaint so as to avoid duplication and to secure an effective resolution of the complaint. It shall be the general practice of CSA to investigate a Title VI complaint, unless there appears to be a compelling reason to do otherwise. In cases where Title VI complaints are not investigated, the compelling reason shall be set forth in writing to the complainant and Assistant Attorney General for Civil Rights.

§ 1010.30-6 Intimidation.

No grantee shall intimidate, retaliate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 624 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971c; Title VI of the Civil Rights Act of 1964, as amended, or this part, or because he/she has made a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any preliminary inquiries thereunder.

§ 1010.30-7 Adjustment of time limits.

The time limits listed in § 1010.30-3 (b)(2) through (b)(4) of this section shall be appropriately adjusted where CSA requests another Federal agency to act on the complaint. CSA will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, CSA shall institute appropriate actions as required by this subpart.

Subpart E—Procedure for Effecting Compliance

§ 1010.40-1 General.

(a) If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any applicable law of the United States or any assurance or other contractual undertaking.

(b) Noncompliance with Subpart C. If an applicant fails or refuses to furnish an assurance required under Subpart C or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that subpart, Federal financial assistance may be refused in accordance with the procedures of this subpart.

(c) The Agency may defer action on applications for assistance to the grantee or applicant during the pendency of enforcement proceedings under this part.

§ 1010.40-2 Termination of or refusal to grant or to continue financial assistance.

(a) No order suspending, terminating or refusing to grant or continue Federal financial assistance for failure to comply with this part shall become effective until:

(1) The Associate Director for Human Rights or his/her designee has advised the applicant or grantee of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or grantee to comply with a requirement imposed by or pursuant to this subpart;

(3) The action has been reviewed by the Director of CSA pursuant to § 1010.40-4 or he/she has had the opportunity to review and did not do so; and

(4) The expiration of 30 days after the Director of CSA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or grantee as to whom such finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been found.

(b) Voluntary compliance will be determined as not being available, if a voluntary compliance agreement is not arrived at during the period for voluntary compliance negotiations set forth by this part.

(c) Section 1010.40-2(a)(4) does not apply to actions concerning discrimination on the basis of creed, political affiliation or belief or to employment discrimination on the basis of race or national origin not covered by Title VI, § 1010.10-3(a), and § 1010.10-3(b).

§ 1010.40-3 Hearings.

(a) *Opportunity for Hearing.* Whenever an opportunity for a hearing is required by this part, reasonable notice of such hearing shall be given by registered or certified mail, return receipt requested. This notice shall advise the applicant or grantee of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and either (1) fix a date less than 20 days after the date of such notice within which the applicant or grantee may request of the responsible CSA official that the matter be scheduled for hearing, or (2) advise the applicant or grantee that the matter in question has been set for hearing at a stated place and time. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or grantee may waive a hearing and submit written information and argument for the record. The failure of an applicant or grantee to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of Title VI and this subpart and consent to the making of a decision on the basis of such information as is available.

(b) *Time and Place of Hearing.* Hearings shall be at a time and place in Washington, DC fixed by the responsible CSA official or his/her designee unless he/she determines for cause that another location should be selected. Hearings shall be held before a hearing officer who shall be referred to hereinafter as the hearing examiner.

(c) *Right to Counsel.* In all proceedings under this section, the applicant or grantee and CSA shall have the right to be represented by counsel.

(d) *Procedures, Evidence and Record.* (1) The hearing, decision, and any review thereof shall be conducted in conformity with 5 U.S.C. 554 through 557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper, relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 1010.40-2 of this part, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both CSA and the applicant or grantee shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing examiner.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing examiner. The hearing exam-

iner may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence unless dispensed with by stipulation. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI, the Director may, by agreement with such other departments or agencies, provide for consolidated or joint hearings, and for the application to such hearings of rules of procedure consistent with this part. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with § 1010.40–4.

§ 1010.40–4 Decisions and notices.

(a) *Initial Decision.* The hearing examiner shall make an initial decision. A copy of such initial decision shall be mailed to the applicant or grantee. The applicant or grantee may within 30 days of the mailing of the initial decision file with the Director of CSA its exceptions to the initial decision. In the absence of exceptions, the Director of CSA may, on his/her own motion, within 45 days after the initial decision, serve on the applicant or grantee a notice that he/she will review the decision. Upon the filing of such exceptions or of such notice of review, the Director of CSA shall review the initial decision and issue his/her own decision thereon. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of CSA.

(b) *Final Decision.* Whenever the Director of CSA makes the initial decision pursuant to paragraph (c) of this section, or whenever the hearing examiner issues an initial decision, the applicant or grantee and complainant shall be given a copy of the decision. A copy of the final decision of the Director of CSA shall be given to the applicant or grantee and the complainant.

(c) *Waived Hearings.* Whenever a hearing is waived pursuant to Section 1010.40–3(a), a decision shall be made by the Director of CSA on the record and a copy of such decision shall be given to the applicant or grantee and to the complainant.

(d) *Rulings Required.* The decision of a hearing examiner shall set forth each of his/her findings, conclusions, or exceptions presented, and shall identify the requirement or requirements imposed by or pursuant to this part, Title VI, or Section 624 of the Economic Opportunity Act of 1964, as amended, that the applicant or grantee has failed to comply with.

(e) *Content of Orders.* The final decision may provide for suspension or termination or, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purpose of Title VI and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or grantee determined to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Associate Director for Human Rights that it will fully comply with this part.

(f) *Post-Termination Proceedings.* (1) An applicant or grantee adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or grantee adversely affected by an order issued pursuant to paragraph (e) of this section may at any time request the Associate Director for Human Rights to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or grantee

has met the requirements of paragraph (f)(1) of this section. If the Associate Director for Human Rights determines that those requirements have been satisfied, he/she shall restore such eligibility.

(3) If the Associate Director for Human Rights denies any such request, the applicant or grantee may submit a written request for a hearing to the Director of CSA specifying why it believes such denial to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with such rules of procedure as are issued by the Director of CSA. The applicant or grantee will be restored to eligibility if it proves at a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 1010.40-5 Judicial review.

Any action taken pursuant to Title VI of the Civil Rights Act of 1964 is subject to judicial review as provided in Section 603 of Title VI.

Supart F—Miscellaneous

§ 1010.50-1 Role of CSA officials.

CSA shall to the fullest extent practicable in accordance with the requirements of this part seek the cooperation of grantees in obtaining compliance with this part, and shall provide assistance and guidance to grantees to help them comply voluntarily with this part.

§ 1010.50-2 Continuing State programs.

(a) Each state agency administering a continuing program which receives Federal assistance from CSA shall establish a Title VI compliance program for itself and other grantees which obtain financial assistance through it.

(b) This program will parallel the provisions of this part, including the maintenance of records necessary to permit Federal officials to determine compliance of the state agency and the sub-grantees with Title VI and this part.

§ 1010.50-3 Effect on other regulations, forms, and instructions.

Nothing in this part shall be deemed to supersede (a) Executive Order 11246 and regulations issued thereunder, or (b) any other regulations or instructions insofar as they prohibit discrimination on the grounds of race, color, national origin or sex in any program or situation to which this part is applicable, or prohibit discrimination on any other ground.

§ 1010.50-4 Supervision and coordination.

The Director of CSA may assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of this part other than the right to review a hearing examiner's initial decision as provided in § 1010.40-4. Any action taken, determination made, or requirements imposed by an official of another department or agency acting pursuant to such an assignment or responsibility shall have the same effect as though such action had been taken by the responsible official of CSA.

APPENDIX A TO PART 1010—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES FUNDING AUTHORITIES UNDER THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED

EOA section	42 U.S.C. section	Federal financial assistance
101	2712	Research, Demonstration & Pilot Projects.
221	2808	Community Action.
222(a)(5)	2809	Community Food and Nutrition.
222(a)(7)	2809	Senior Opportunities and Services.
222(a)(11)	2809	Rural Housing Development and Rehabilitation.
222(a)(12)	2809	Emergency Energy Conservation Services.
222(a)(13)	2809	Summer Youth Recreation.
226	2813	Design and Planning Assistance Programs.
227	2814	National Youth Sports Programs.
228	2815	Consumer Action and Cooperative Programs.
230	2823	Technical Assistance and Training.
231	2824	State Agency Assistance.
232	2825	Research and Pilot Programs.

EOA section	42 U.S.C. section	Federal financial assistance
234	2827	Special Assistance.
235	2828	Demonstration Community Partnerships.
302(a)	2851	Loans to Low Income Families (Rural Loan Programs).
312	2862	Assistance for Migrant, and Other Seasonally Employed, Farmworkers and their Families.
712	2982a	Community Development Corp.
247(b)	2985e	Research and Planning (Community Economic Development).
901(a)	2995	Program and Project Evaluation.

APPENDIX B TO PART 1010—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

Inner-City Youth Employment Program

APPENDIX C TO PART 1010—APPLICATION OF PART 1010 TO FEDERAL FINANCIAL ASSISTANCE OF COMMUNITY SERVICES ADMINISTRATION

Nondiscrimination in Federally Assisted Programs

(A) *Examples:*

The following examples, without being exhaustive, illustrate the application of the non-discrimination provisions of this part in programs or projects receiving Federal financial assistance from the Community Services Administration.

1. Denial of the opportunity to participate in a program because of race, color or national origin.—An Off-reservation Native American funded program in an urban area denies a Caucasian the opportunity to participate in the food and nutrition component of the program because she/he is not a Native American.

2. Failure to ensure that all segments of the low-income community have an equal opportunity to participate in the board member representation elective process because of race, color, or national origin.—A Community Action Agency in a multiracial community utilizing a mobile voting booth for board member elections in the area served, allots an equal amount of time in each of the ethnic and racial areas except for the Black community.

3. Providing a disproportionate allocation to one sector of a community with a predominant monoracial composition where the disproportionate allocation is not justified by a CSA-approved program objective.—A Community Action Agency serving a poverty population composed of 10% White, 77% Black, 10% Hispanic and 3% Oriental provides the White poverty community with 50% and the Black poverty community with 20% of the funds available to the poverty area served.

The above disproportionate allocations may be justifiable if the CSA-approved program objective was to address unemployment, and if 90% of the White poverty area was unemployed compared to 5% of the Black poverty area.

4. The utilization of sites and facilities that have historically discriminated, which affects the participation of beneficiaires because of race, color, or national origin.—A Community Action Agency in a multiracial community which is predominately Black leases a facility for use as a neighborhood service center in an exclusive White area that is inaccessible to the Black community.

PART 1050—UNIFORM FEDERAL STANDARDS

Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration (CSA Instruction 6800-1)

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1050.1 Applicability.
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1050.3 Exceptions to the Uniform Federal Standards.
1050.4 Definitions of terms as used in this part.
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Subpart B—Cash Depositories (CSA Instruction 6800-2)

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1050.57 CSA implementing policies and procedures.

Subpart G—Standards for Financial Management Systems (CSA Instruction 6800-7)

1050.60 References.
1050.61 Standards.
1050.62 CSA implementing policies and procedures.

Subpart H—Financial Reporting Requirements (CSA Instruction 6800-8)

1050.70 References.
1050.71 Definitions.
1050.72 Standard.
1050.73 CSA implementing policies and procedures.

Subpart I—Monitoring and Reporting Performance (CSA Instruction 6800-9)

1050.80-1 Applicability.
1050.80-2 Standard.
1050.80-3 CSA implementing policies and procedures.
ATTACHMENT A
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Subpart J—Payment Requirements (CSA Instruction 6800-10)

1050.90 References.
1050.91 Definitions.
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1050.93 CSA implementing policies and procedures.

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Subpart K—Revision of Financial Plans [Reserved]

Subpart L—Grant Closeout Procedures (CSA Instruction 6800-12)

1050.110 References.
1050.111 Definitions.
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Subpart M—Suspension and Termination Procedures (CSA Instruction 6800-13)

1050.115-1 References.
1050.115-2 Definitions.
1050.115-3 Failure to comply with grant terms and conditions.
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1050.115-7 CSA implementing policies and procedures governing suspensions.
1050.115-8 CSA implementing policies and procedures governing termination of assistance.

Subpart N—Standard Form for Applying for Federal Assistance (SF 424) (CSA Instruction 6800-14)

1050.120 References.
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Subpart O—Property Management Standards

1050.130-1 Applicability.
1050.130-2 References.
1050.130-3 Purpose.
1050.130-4 Definitions.
1050.130-5 Standard—real property.
1050.130-6 Standard—federally owned nonexpendable personal property.
1050.130-7 Standard—exempt property.
1050.130-8 Standard—other nonexpendable property.
1050.130-9 Standard—expendable personal property.
1050.130-10 Standard—intangible property.
1050.130-11 Property acquisition.

Subpart P—Procurement Standards

1050.160-1 Applicability.
1050.160-2 References.
1050.160-3 Definition.
1050.160-4 Purpose.
1050.160-5 General responsibilities and procedures.
1050.160-6 Standard—code of conduct.
1050.160-7 Standard—open competition.
1050.160-8 Standard—procedures.

Sec.
1050.160-9 Method of procurement for State and local governments.
1050.160-10 Standard—contract provisions.

AUTHORITY: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942); §§ 1050.112 and 1050.113 also issued under sec. 682(e), Pub. L. 97-35, 95 Stat. 519 (42 U.S.C. 9911).

SOURCE: 42 FR 18034, Apr. 4, 1977, unless otherwise noted.

Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration (CSA Instruction 6800-1)

§ 1050.1 Applicability.

45 CFR Part 1050 is applicable to all grants and other agreements made under the Economic Opportunity Act of 1964, as amended, to public and private organizations/agencies, including those serving as delegate agencies, when the assistance is administered by the Community Services Administration.

§ 1050.2 Purpose.

The purpose of Part 1050 is to set forth the Uniform Federal Standards pursuant to OMB Circular A-110 and FMC 74-7 (A-102) and to provide grantees with CSA's policies and procedures implementing those standards the goal of which is to obtain consistency and uniformity among Federal agencies in the administration of grants to, and other agreements with, units of local and State Government, public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations.

§ 1050.3 Exceptions to the Uniform Federal Standards.

(a) *For classes of grantees.* Neither CSA nor any other Federal agency can apply more restrictive or differing requirements on a class of grantees unless (1) a statute expressly prescribes policies or specific requirements that differ from the standards or (2) the agency has received approval from the Office of Management and Budget.

(b) *For certain grantees.* CSA may impose additional requirements on individual grantees if the grantee has a history of poor performance, is not financially stable, or its management system does not meet the standards set forth in Part 1050. In those instances CSA must inform the grantee in writing as to (1) why the additional standards are being imposed and (2) what corrective action is needed. Copies of such notifications must be sent to OMB and other agencies funding the grantee at the same time the grantee is notified.

§ 1050.4 Definitions of terms as used in this part.

(a) The term "grant" means money or property provided in lieu of money paid or furnished by grantees under programs that provide financial assistance or that provide support or stimulation to accomplish a public purpose. The term "other agreements" does not include contracts which are required to be entered into and administered under procurement laws and regulations. Grants and other agreement exclude (1) technical assistance programs, which provide services instead of money, (2) assistance in the form of general revenue sharing, loans, loan guarantees, or insurance, and (3) direct payments of any kind to individuals.

(b) The term "grantee" is used by CSA in lieu of "recipient" and includes the following types of nonprofit organizations that are receiving Federal funds from a Federal agency or through a State or local government:

(1) Public and private institutions of higher education: public and private hospitals; and other quasi-public and private nonprofit organizations such as (but not limited to) community action agencies, research institutes, educational associations, and health centers. In addition, for purposes of this part, it includes private-for-profit organizations funded under Title VII of the EOA. The term does not include foreign or international organizations (such as agencies of the United Nations) and Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large scale programs that are Government-owned, or

are designed as federally-funded research and development centers.

(c) The term "delegate agency" is used by CSA in lieu of "subrecipient" and means a public or private agency, institution or organization or a State or other political jurisdiction to which the development, conduct and administration of all or part of a project assisted under the Economic Opportunity Act of 1964, as amended, has been delegated by a grantee or by another agency or organization which has received assistance by or through a grantee, but does not include individuals who ultimately receive benefits under any program or assistance.

§ 1050.5 Implementing schema.

(a) *Responsibilities.* OMB Circular A-110 and FMC 74-7 (Cir. A-102) require all Federal agencies administering programs that involve grants and other agreements with grantees to issue appropriate implementing regulations.

(b) *Publication formats.* As with all policy statements CSA is issuing its implementing regulations both in the FEDERAL REGISTER and as part of the CSA directives system. However, a separate Part (1050) has been established in the Code of Federal Regulations within which all Uniform Federal Standards and accompanying CSA policies and procedures will be published. Also, in the CSA directives system the 6800 series will be used exclusively for promulgation of the standards. Each standard will be issued as a separate CSA Instruction within that series with accompanying CSA implementing policies and procedures (if required) to be issued as an Attachment to the appropriate Instruction. As a further means of more easily identifying the standards, CSA will deviate from its normal practice of using yellow stock to identify policy statements and will publish the standards on blue stock.

(c) *Cross Reference Index.* Following is an index which provides a cross reference to CSA implementing regulations:

Attachments to—		Title	Implementing regulations	
OMB circular A-110	FMC 74-7		CSA instruction	CFR reference
A	A	Cash Depositories	6800-2	1050.10
B	B	Bonding and Insurance	6800-3	1050.15
C	C	Retention and Custodial Requirements for Records	6800-4	1050.20
D	E	Program Income	6800-5	1050.40
E	F	Cost Sharing and Matching	6800-6	1050.50
F	G	Standards for Financial Management Systems	6800-7	1050.60
G	H	Financial Reporting Requirements	6800-8	1050.70
H	I	Monitoring and Reporting Program Performance	6800-9	1050.80
I	J	Payment Requirements	6800-10	1050.90
J	K	Revision of Financial Plans	6800-11	1050.100
K	L	Closeout Procedures	6800-12	1050.110
L	L	Suspension and Termination Procedures	6800-13	1050.115
M	M	Standard Form for Applying for Federal Assistance	6800-14	1050.120
N	N	Property Management Standards	6800-15	1050.130
O	O	Procurement Standards	6800-16	1050.160

Subpart B—Cash Depositories (CSA Instruction 6800-2)

§ 1050.10 Physical segregation and eligibility.

Except for situations described in §§ 1050.11, 1050.12 and 1050.13 the Community Services Administration does not:

(a) Require physical segregation of cash depositories for CSA funds which are provided to a grantee.

(b) Establish any eligibility requirements for cash depositories for CSA funds which are provided to a grantee.

§ 1050.11 Letter-of-credit—checks paid basis.

A separate bank account is required when applicable letter-of-credit agreements provide that drawdowns will be made when the grantee's checks are presented to the bank for payment.

§ 1050.12 FDIC insurance coverage.

Any monies advanced to a grantee which are subject to the control or regulation of the United States or any of its officers, agents or employees' (public monies as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

§ 1050.13 Minority-owned banks.

Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and delegate agencies are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

Subpart C—Bonding and Insurance (CSA Instruction 6800-3)

§ 1050.15 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment B).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment B).

(3) CSA Instruction 6710-6, Applying for a grant under Title VII of the Community Services Act.

(4) CSA Instruction 6710-8, Preparing a Budget for a Title VII grant under the Community Services Act.

(5) CSA Instruction 6143-1a, Emergency Energy Conservation Program (45 CFR 1061.30).

§ 1050.16 Standard.

(a) In administering CSA grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. CSA will not impose additional bonding and insurance requirements including fidelity bonds, except as provided in paragraphs (b) through (d) of this section.

(b) *Construction and facility improvement.* The recipient of a CSA grant which requires contracting or facility improvement (including any CSA grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, CSA may determine that the grantee's bonding provisions adequately protect the Federal Government's interest; otherwise the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Loan guarantees.* Where in connection with a CSA grant, CSA also guarantees the payment of money borrowed by the grantee, CSA may, at its discretion, require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interests of the Federal Government.

(d) *Fidelity bonds.* If the grantee is a nongovernmental organization, CSA requires adequate fidelity bond coverage.

(e) *Source of bonds.* Any bonds obtained pursuant to paragraphs (b) (1) through (3), (c) or (d) of this section shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

§ 1050.17 CSA implementing policies and procedures.

(a) *Policy.* OMB Circular A-110 permits Federal agencies to require fidelity bond coverage of its nongovernmental grantees if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government. Therefore, CSA will require evidence of appropriate bonding or assurance that arrangements have been made to obtain such coverage in line with the following policies and procedures.

(1) *Bond coverage of officials*—(i) *Assurance of fidelity bond coverage.* (A) Prior to the release of funds to any nongovernmental grantee for the first initial grant CSA must receive written assurance that the grantee has or has made arrangements for appropriate bonding of grantee officials. This assurance will take the form of a letter from a bonding company or agent stating the type of bond, amount and period of coverage, positions covered, and the annual cost of the bond that has been obtained.

(ii) *Coverage.* In all other situations, nongovernmental grantees must either have secured or must take steps to secure fidelity bond coverage in line with the following guides:

(A) Coverage should be secured in the aggregate amount of $25,000 for persons authorized to sign or countersign checks or to disburse sizeable amounts of cash (such as for payrolls). Persons who handle only petty cash need not be bonded. Nor is it necessary to bond officials who are authorized to sign Payment Vouchers, but who are not authorized to sign or countersign checks or to disburse cash.

(B) Grantees normally should obtain a 3 year bond, payable annually, with an option to cancel in the event the program terminates before three years. Such terms are available from most surety companies.

(iii) *Responsibility vis-a-vis delegate agencies.* Grantees—both public and private—are responsible for assuring that appropriate officials of nongovernmental delegate agencies are bonded. Coverage for officials of delegate agencies which are private organizations shall be equal to the average of funds to be expended each month (up to an aggregate amount of $25,000.) If a delegate agency will expend less than $1,000 per month in program funds, on the average, bond coverage is not required.

(b) *Procedures.* Copies of bonds secured by the grantee and by delegate agencies should be filed by the grantee and need not be submitted to CSA.

(c) *Affect of this Subpart on other CSA Policies and Procedures.* (1) OEO Instruction 7570-1, pp. 17 and 18, item 11. (3) Bonding: The three paragraphs are superseded and the sentence "See Instruction 6800-3 regarding applicability of bonding requirements and procedures." should be inserted.

(2) OEO Instruction 7570-2, p. 7, item 8.b: The period at the end of the sentence is deleted and the sentence "(See CSA Instruction 6800-3 regarding applicability of bonding requirements and procedures.)" should be inserted.

Subpart D—Retention and Custodial Requirements for Records (CSA Instruction 6800-4)

§ 1050.20 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment C).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment C).

(3) CSA Instruction 6800-5, Program Income (Uniform Federal Standard) (45 CFR 1050.40).

(4) CSA Instruction 6800-15, Property Management Standards (Uniform Federal Standard) (45 CFR 1050.130).

(5) OEO Instruction 6801-1, Grantee Fiscal Responsibility and Auditing.

(6) OEO Instruction 6810-1, Grantee Compliance with IRS Requirements for Withheld Federal Income and Social Security Taxes.

(7) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII of the EOA of 1964 as amended (45 CFR 1067.5).

§ 1050.21 Documents affected.

Financial records, supporting documents, statistical records, and all other records pertinent to a grant are covered by the requirements in this subpart.

§ 1050.22 Length of retention period.

Except as provided in paragraphs (a) and (b) of this section and reference (6) (employer's tax records), records shall be retained for three years.

(a) If any litigation, claim or audit by or on behalf of the Federal Government involving the records has not been fully resolved before the expiration of the three-year period, the records shall be retained until resolution or until the end of the regular three-year period, whichever is later. In no case, however, will CSA require retention of records relating to any grant with respect to which actions by the United States to recover for diversion of money paid under the grant are barred by the statute of limitations in 28 U.S.C. 2415(b). That statute bars legal actions unless filed within six years after the right of action accrues. The six years excludes any periods in which the circumstances listed in 28 U.S.C. 2416 apply, e.g., material facts cannot be known, or a state of war exists.

(b) In order to avoid duplicate record-keeping, CSA may make special arrangements with grantees to retain any records which are continuously needed for joint use. CSA will request transfer of records to its custody from grantees when it determines that the records possess long-term retention value. When the records are transferred to or maintained by CSA, the three-year retention requirement is not applicable to the grantee.

§ 1050.23 Starting date of retention period.

(a) *General.* Except for records covered by paragraphs (a) (1) and (2) of this section, where CSA grant support is continued or renewed on an annual basis, the retention period for each year's records starts from the date of submission to CSA of the grantee's annual or last financial report for that year; in all other cases the retention period starts from the date of submission to CSA of the grantee's final financial report.

(1) *Records for non-expendable property.* The retention period for records for non-expendable property required by reference (4) starts from the date of disposition of the property. However, for property that has been replaced pursuant to reference (4), the retention period starts from the disposition of the replacement property.

(2) *Records pertaining to certain classes of income.* For records that relate to classes of program income subject to reference (3), the three-year retention period starts from the date the income is earned.

§ 1050.24 Substitution of Microfilm.

Microfilm copies may be substituted for the original records.

§ 1050.25 Access to records.

(a) CSA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to a specific CSA grant, in order to make audits, examinations, excerpts and transcripts.

(b) In case of a delegation under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the ultimate delegate agency which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

(c) In the case of a contract (or sub-contract) under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency, contractor, or sub-contractor, or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the contractor or sub-contractor which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

§ 1050.26 Restrictions on public access.

(a) *Private Grantees.* Unless otherwise required by law, CSA will not place restrictions on grantees which will limit public access to records covered by this subpart except when CSA has determined that the records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act if the records had belonged to CSA.

(b) *Public Grantees.* Unless otherwise required by law, CSA will not place restrictions on State and local governments which will limit public access to the State and local governments' records except when records must remain confidential. Following are some of the reasons for withholding records:

(1) Prevent a clearly unwarranted invasion of personal privacy.

(2) Specifically required by statute or Executive Order to be kept secret.

(3) Commercial or financial information obtained from a person or a firm on a privileged or confidential basis.

§ 1050.27 CSA implementing policies and procedures.

(a) Changes to Existing CSA Policy Statements.

(1) Following are changes to be made to OEO Instruction 6801-1, page 10, item 6, second sentence: Everything appearing after the word "retained" is deleted and the following inserted:

> * * * for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800-4.)

(2) Following are changes to be made to CSA Instruction 7050-1, page 4, item 12, line 9: Everything appearing after the word "retained" is deleted and the following added:

> * * * for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800-4.)

Subpart E—Program Income (CSA Instruction 6800-5)

§ 1050.40 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. (Attachment D.)

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Att. E).

(3) CSA Instruction 6158-3, Small Business Programs Funded by CDCs (45 CFR 1076.20).

(4) CSA Instruction 6800-8, Financial Reporting Requirements (45 CFR 1050.70).

(5) CSA Instruction 6800-15, Property Management Standards (45 CFR 1050.130).

(6) OEO Guidance 6801-1, Grantee Financial Control Techniques.

(7) GSA Instruction 7050-1, General Conditions Governing CSA. Grants Under Titles II, III-B, and VII of the EOA of 1964 as amended (45 CFR 1067.5).

§ 1050.41 Definition of program income.

Program income represents gross income earned by the grantee from CSA funded activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

§ 1050.42 Standard.

(a) *Interest.* Interest earned on advances of Title II funds shall be remitted to the Community Services Administration except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577).

(b) *Program Income*—(1) *Sale of Real and Personal Property.* Proceeds from the sale of real and personal property either provided by CSA or purchased in whole or in part with CSA funds shall be handled in accordance with § 1050.130 (CSA Instruction 6800-15).

(2) *Royalties earned from copyrights or patents.* (i) Unless the grant provides otherwise, grantees shall have no obligation to the Community Services Administration with respect to royalties as a result of copyrights or patents produced under the grant. (See references (5) and (7).)

(ii) However, in the case of public grantees, if after termination or completion of the grant, there is an excess of royalties of $200 or more earned annually by the Federal share these sums shall be returned to CSA in the absence of other specific agreements between CSA and the grantee.

(3) *Other program income.* All other program income earned during the project period shall be retained by the grantee and, in accordance with the grant, shall be:

(i) Added to funds committed to the project by the Community Services Administration and the grantee and be used to further eligible program objectives; or

(ii) Deducted from the total project cost in determining the net cost on which the Federal share of costs will be based.

§ 1050.43 CSA implementing policies and procedures.

(a) *Policy*—(1) *Service fees.* Under limited circumstances CSA may approve the charging of a fee to grantees of services supported with CSA funds. Such approval, however, does not allow the grantee to use Federal funds to produce income for the benefit of the grantee.

(b) *Procedures*—(1) *Return of interest.* Interest earned on the investment of CSA funds will be reported on SF-272, item 13.a (see reference (4)) and a check payable to the Treasurer of the United States for the earned interest should be attached to the report and sent to the CSA office responsible for administering the grant.

(2) *Return of royalties.* Public grantees who have royalty fees which must be returned to CSA (see § 1050.42(b)(2)) shall do so by forwarding a check, payable to the Treasurer of the United States, to the CSA office which had been responsible for administering the grant.

(3) *Other program income.* The CSA office responsible for administering the grant will also be responsible for determining the manner and grant period in which income retained by grantees is used within the constraints of the Standard outlined in § 1050.42(b)(3).

(4) *Reporting program income.* Program income will be reported on SF 269, Financial Status Report and on SF 272, Federal Cash Transactions. (See reference (4).)

Subpart F—Cost Sharing and Matching (CSA Instruction 6800-6)

§ 1050.50 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment E).

(2) Federal Management Circular 74-7 (or OMB Circular A-102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment F).

(3) CSA Instruction 6802-3, Non-Federal Share Requirements for Title II, sections 221, 222(a) and 231 Programs (45 CFR 1068.20).

(4) CSA Instruction 6802-4, Additional Communities Eligible for Waivers of Non-Federal Share Requirement (Puerto Rico, Trust Territories, the Virgin Islands, and Indian Tribes on Reservations (45 CFR 1068.21).

(5) CSA Instruction 6802-5, Eligibility for Waiver of Increased Non-Federal Share Contribution (45 CFR 1068.22).

(6) OEO Instruction 7641, Waiver of Non-Federal Share of Program Costs for Certain Title I-D Programs.

§ 1050.51 Definitions.

(a) *Project costs.* Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a grantee and the value of the in-kind contributions made by the grantee or third parties in accomplishing the objectives of the grant or other agreement during the project or program period.

(b) *Cost sharing and matching.* In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government.

(c) *Cash contributions.* Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by non Federal third parties.

(d) *In-kind contributions.* In-kind contributions represent the value of non-cash contributions provided by the grantee and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

§ 1050.52 Standards.

(a) *Costs and contributions acceptable.* (1) Cost sharing or matching may consist of:

(i) Charges incurred by the grantee as project costs. (Not all charges require cash outlays by the grantee during the project period: Examples are depreciation and use charges for building and equipment.)

(ii) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals, except as provided in paragraph (a)(1)(ii)(A) of this section:

(A) Generally, any funds provided for payment of salaries in excess of $15,000 shall not be counted as a non-Federal share contribution toward a Title II grant per section 244(2) of the Economic Opportunity Act of 1964 as amended. However, these funds may be counted as a non-Federal share donation in those cases "* * * (particularly in large metropolitan areas) where, because of the need for specialized or professional skills or prevailing local salary levels, application of the * * * restriction would greatly impair program effectiveness or otherwise be inconsistent with the purposes sought to be achieved."[1] Grantees who wish to request such an exception will submit data and written justification to the appropriate CSA Administering Office and the Administering Office's response shall be retained by the grantee for audit purposes.

(B) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.[2]

§ 1050.53 Qualifications.

(a) All contributions, both cash and in-kind, shall be accepted as part of the grantee's cost sharing and matching when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under the applicable cost principles;

(5) Are not paid by the Federal Government under another assistance agreement unless the agreement is authorized by Federal law to be used for cost sharing or matching, e.g., General Revenue Sharing; Title I of the Housing and Community Development Act of 1974, Pub. L. 93-383;

(6) Are provided for in the approved budget when required by CSA; and

(7) Conform to other provisions of this subpart.

§ 1050.54 Valuation of grantee in-kind contributions.

Values for grantee in-kind contributions will be established in accordance with the applicable cost principles.

§ 1050.55 Valuation of third-party in-kind contributions.

(a) *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

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[1] Section 244(2) of the EOA of 1964, as amended.

[2] This includes volunteer services of board members. However, to be counted these services must be other than those required of them in their capacities as board members. For example, time spent at board or committee meetings by a board member who is a doctor would not be acceptable but time spent by him/her working in a clinic would be accepted. This also allows volunteer services of staff to be counted as non-Federal share when such services are not required by the positions they hold. (Grantees are reminded that any work performed by staff members which is in line with the normal responsibilities of their positions and is in excess of the normal weekly working hours is covered by the CSA overtime regulations (see OEO Instruction 6900-01) and can not be considered as a non-Federal share contribution.)

(1) *Rates for volunteer services.* Rates for volunteers should be consistent with those paid for similar work in the grantee's organization or which those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) *Volunteers employed by other organizations.* When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(b) *Valuation of donated, expendable personal property.* Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(c) *Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.* (1) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or other agreement as follows:

(i) If the purpose of the grant or other agreement is to assist the grantee in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the Community Services Administration has approved the charges.

(2) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(i) *Land and buildings.* The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the grantee.

(ii) *Nonexpendable personal property.* The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(iii) *Use of space.* The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(iv) *Loaned equipment.* The value of loaned equipment shall not exceed its fair rental value.

§ 1050.56 Supporting records for in-kind contribution from non-Federal third parties.

(a) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees. (See § 1050.57.)

(b) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented. (See § 1050.57.)

§ 1050.57 CSA implementing policies and procedures.

(a) *CSA Legislative Non-Federal Share Requirements.* Sections 225(c), 235(b), and 714 of the Economic Opportunity Act of 1964 as amended require the contribution of non-Federal share by grantees funded under Sections 221, 222(a), 235, and 712 of that Act. In addition the Director of the Community Services Administration may administratively require a non-Federal share contribution from grantees funded under other sections of the Act if the grants are administered by Community Services Administration. Policies and procedures implementing the legislative requirements of the Economic Opportunity Act will be found in references (3) through (6) of this subpart.

(b) *Accounting for the non-federal share.* (1) The Statement of CSA Grant, Form 314, shows the minimum percentage of total program expenditures which non-Federal funds must constitute in the grant period. The grantee is expected to maintain the rate of contribution of the non-Federal share so that throughout the grant period Federal funds will not be used to pay for a substantially larger percentage of project costs than the Federal funds shown on the Statement of CSA Grant constitute.

(2) It is important to note that the Federal share may never exceed either the dollar amount shown on the Statement of CSA Grant or the maximum percentage of the total program expenditures that this constitutes. The grantee must provide only sufficient non-Federal contributions so that the Federal share remains at or below the maximum percentage; however, the grantee may choose to provide additional non-Federal share, to insure a margin of safety, in the event that annual audits disallow some contributions.

(3) The non-Federal share may be provided in one program account for the entire grant or it may be spread among several program accounts. (See reference (3) to this subpart.)

(4) Non-Federal share contributions of cash shall be recorded as they occur. It is not necessary to maintain separate ledger accounts for the expenditures of grantee cash.

(5) All in-kind contributions, including those applicable to delegate agencies, must be recorded in the ledger accounts, either in separate accounts or in separate columns, as grant costs when the in-kind services or goods are performed or received. Records, including required supporting documentation, on in-kind services or goods performed or received must be established and maintained on a current basis.

(6) The non-Federal share is subject to audit, as is the Federal share.

(c) *Required documentation—Volunteered services.* All volunteered services claimed as non-Federal share must be substantiated by time cards or records that are signed by both the volunteer and his supervisor as is required for all other employees. Such records must show the actual hours worked and the specific duties performed. They should also indicate the basis for determining the rate of volunteer's contribution and such documentation must be available for audit.

(d) Financial assistance of Title II of the Ecomomic Opportunity Act of 1964, as amended, may be used to provide the required 10% matching share of the wages of students employed under the College Work Study Program (CWSP) who work in Community Action Programs.

[42 FR 18034, Apr. 4, 1977, as amended at 44 FR 56549, Oct. 1, 1979]

Subpart G—Standards for Financial Management Systems (CSA Instruction 6800-7)

§ 1050.60 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment F).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. (Attachment G.)

(3) OEO Instruction 6710-02, Instruction for Defining Cost Categories.

(4) CSA Instruction 6710-7, Amending a Grant Under Title VII of the Community Services Act.

(5) CSA Instruction 6710-8, Preparing a Budget for a Title VII Grant Under the Community Services Act.

(6) CSA Instruction 6800-6, Cost Sharing and Matching (Uniform Federal Standard). (45 CFR 1050-50.)

(7) OEO Instruction 6801-1, Grantee Fiscal Responsibility and Auditing, and Changes 1 and 2 to that Instruction.

(8) OEO Instruction 6803-1a, Allowances and Reimbursements for Members of Policy Making Bodies.

(9) OEO Instruction 6803-2, Allowability of Costs Incurred to Borrow Funds.

(10) OEO Instruction 6806-01, Establishing and Maintaining Program Accounts.

(11) OEO Instruction 6806-04, Accounting for Delegated or Contracted Activities.

(12) OEO Instruction 6807-1, Limitation on CAA Administrative Costs.

(13) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded

Under Titles II, III-B and VII of the EOA of 1964 as amended. (45 CFR 1067.5.)

(14) OEO Instruction 7570-1, Applying for a New Research or Demonstration Grant Under the Economic Opportunity Act.

(15) OEO Instruction 7570-2, Applying for Continuation of a Research or Demonstration Grant Under the Economic Opportunity Act.

§ 1050.61 Standards.

(a) Following are the standards for financial management systems for grantees. (References (3) through (15) contain CSA's detailed implementing policies and procedures.) CSA will impose no additional standards on grantees unless they are specifically provided for in applicable statutes. Grantees' financial management systems will provide for the following: (1) Accurate, current and complete disclosure of each CSA sponsored project or program in accordance with the financial reporting requirements set forth in § 1050.70 (CSA Instruction 6800-8).

(2) Records that identify adequately the source and application of funds for CSA sponsored projects. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.

(3) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each grant or other agreement. Financial information should be related to performance and unit cost data.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursement.

[See § 1050.90 (Instructions 6800-10) for letter-of-credit procedures.]

(6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.

(7) Accounting records that are supported by source documentation.

(8) Examinations in the form of audits or internal audits.[1] Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems, and internal procedures that have been established to meet the terms and conditions of the agreements.

It is not intended that each agreement awarded to the grantee be examined. Generally examinations should be conducted on an organization wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of Federal grants and other agreements. Such tests will include an appropriate sampling of Federal agreements.[2] Examination will be conducted with reasonable frequency on a continuing basis or at scheduled intervals but at least annually in accordance with reference (7) and Section 243 of the Economic Opportunity Act of 1964 as amended.

(9) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and

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[1] Applicable to private grantees only.

[2] Because Section 243 of the Economic Opportunity Act of 1964, as amended, requires more frequent audits, i.e., at least annually, than that prescribed for grants funded by most other Federal agencies, the independent auditor may be requested by the grantee to examine CSA agreements only. In those cases, of course, the audit would limit his/her examination to CSA agreements and would include a sampling of CSA agreements only.

administrative requirements. The grantee will schedule such audits annually in accordance with reference (7) and section 243 of the Economic Opportunity Act of 1964 as amended.[3]

(10) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) *Delegate agencies.* Grantees shall require delegate agencies to adopt the standards in § 1050.61(a) except for the requirement in (5), regarding the use of the letter-of-credit method and that part of (1) regarding reporting forms and frequencies prescribed in § 1050.70 (CSA Instruction 6800-8).

§ 1050.62 CSA implementing policies and procedures.

(See references (3) through (15) of this subpart for CSA's implementing policies and procedures as they relate to the standards set forth in this subpart.)

Subpart H—Financial Reporting Requirements (CSA Instruction 6800-8)

§ 1050.70 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment G).

(2) FMC 74-7, (or OMB Circular A-102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment H).

(3) OEO Instruction 6807-1, Limitation on CAA Administrative Reports.

§ 1050.71 Definitions.

(a) *Accrued expenditures.* Charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, delegate agencies, and other payees; and (3) amounts becoming owed by the grantee under programs for which no current services or performance are required by the grantee.

(b) *Accrued income.* The earnings during a given period which is a source of funds resulting from (1) services performed by the grantee, (2) goods and other tangible property delivered to purchasers, and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

(c) *Disbursements.* Payments in cash or check.

(d) *Federal funds authorized.* Represents the total amount of the Federal funds (in this case CSA funds) authorized for obligations as established in the grant document. This amount shall include any authorized carryover or unobligated funds from prior fiscal or program year.

(e) *In-Kind contributions.* Represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically indentifiable to the grant program. When authorized by Federal legislation property purchased with Federal funds may be considered as grantee's in-kind contribution.

(f) *Obligations.* The amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

(g) *Outlays.* Represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

(h) *Program income.* Represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from services fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

(i) *Unobligated balance.* The portion of the funds authorized by CSA which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

(j) *Unliquidated obligations.* Represent the amount of obligations incurred by the grantee which have not been paid.

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[3] Applicable to public grantees only.

(k) *Program year.* A grantee's 12-month accounting period. For Community Action Agencies this is the funding period for the principal grant that provides funds for most of the grantee's administrative costs. For other agencies funded by CSA, this is their usual 12-month accounting period which may or may not correspond with funding period of their grant(s) from CSA.

(l) *Funding period.* A program account funding period extends from the effective date of a new or refunding action through the termination date, or expiration of the planned number of months for which funds are provided.

§ 1050.72 Standard.

(a) CSA will continue to utilize either the Letter of Credit or the predetermined monthly check issue as the two methods for making funds available to all construction and nonconstruction projects or programs. For the purpose of determining the status of those funds and to insure sound cash management on the part of grantees and delegate agencies CSA requires the submission of the following quarterly reports:

(1) *Reports required.* (i) Financial Status Report, SF 269 (for nonconstruction projects or programs).

(ii) Federal Cash Transactions Report, SF 272 (and 272A—Continuation Sheet, if necessary).

(iii) Outlay Report and Request for Reimbursement for Construction Programs, SF 271 (for construction programs only).

(2) *Preparation of reports.* Reports may be prepared on either a cash or an accrual basis with the appropriate indication on the report as to the method utilized. In the event that CSA should require all reports to be submitted on an accrual basis grantees will not be required to convert their accounting system, but shall develop such accrual information through estimates based on an analysis of documentation on hand.

(3) *Submission.* Reports are required within 15 working days after the end of each quarter of the grantees program year with a final report due within 90 days after the completion or termination of the grant. Extensions to reporting dates may be approved upon request of the grantee. CSA may require monthly reports from grantees with awards of $1 million or more annually.

(b) *SF 272, report of Federal cash transactions.* (1) CSA will use this report to monitor cash advanced to grantees and to obtain disbursement information for each agreement from the grantees. (2) CSA requires that grantees indicate in the "remarks" section of the SF 272 report the reason(s) for having and the need for retaining a cash balance of Federal funds in excess of current operating needs. For grantees on Letter of Credit current needs will relate to the amount of time required to fully effect a draw down in order to meet daily disbursement requirements. For grantees on monthly check issue current cash needs will mean a cash balance no greater than is necessary to meet operating requirements.

(c) *Additional reporting requirements.* When CSA needs additional information or more frequent reports in order to comply with legislative requirements or to monitor a grantee that has failed to meet the Standard for Financial Management as defined in CSA Instruction 6800-7, CSA will, prior to making any such request, adhere to the requirements imposed by OMB Circular No. A-40.

(d) CSA has the option of shading out any line item on any report that is unnecessary for decision-making purposes.

(e) CSA will accept the identical information from grantees in machine usable format or computer printouts in lieu of prescribed formats.

(f) CSA may provide computer outputs to grantee when it will expedite or contribute to the accuracy of reporting.

(g) CSA is authorized to reproduce these forms.

§ 1050.73 CSA implementing policies and procedures.

(a) *Policy.* (1) If any CSA regulation prescribes policies or requirements that differ from the provisions provided herein, the provisions of this subpart shall govern.

(2) All references to CSA Forms 315 and 315a in other documents will be deemed to mean SF-272 and the SF-269. CSA Forms 315 and 315a will be obsolete after April 30, 1977.

(3) Quarterly financial reports which are due subsequent to April 30, 1977 will be reported on SF-269, Financial Status Report. The SF-272, Federal Transactions Report, will be submitted at the same time.

(b) *General instructions.* (1) These general instructions apply to the preparation of Standard Forms 269, 271, and 272. Detailed instructions for their preparation will be found on the forms themselves.

(i) *How many copies to prepare.* Grantees shall prepare sufficient copies of the reports for each program year to make the distribution as shown below.

(ii) *Where to send reports.* (A) Grantees whose grant is administered by a CSA Regional Office will send one copy to the appropriate Regional Office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street NW., Washington, DC 20506.

(B) Grantees who have CSA grants administered by both a CSA Regional Office and a Headquarters Office(s) will send one copy to the appropriate Regional Office, one copy to each funding office in the CSA Headquarters, and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(C) Grants receiving funds solely from Headquarters program offices will submit one copy to each funding office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(iii) *When to report.* (A) Standard Forms 269, 272, (and SF 271 when required for Construction Programs) will be submitted quarterly based upon the grantee's program year. The reports are to be submitted to the appropriate CSA Office 15 working days following the end of each quarter.

(B) Grantees are required to submit a final financial report for all programs with a fixed termination date within 90 days after the termination date. In those situations where the terminated program is the grantee's only CSA-funded program, a check (payable to CSA) for the amount of the unexpended funds should accompany the report.

(iv) *What to report.* CSA grants are to be charged only with those costs related to Community Services Administration sponsored programs.

(v) *Reporting delegate agency data.* When delays do not permit reporting in time to meet the CSA grantee reporting deadlines, expenditures of the delegate agencies should be estimated by the parent organization and incorporated into the grantee quarterly Financial Status Reports. However, these amounts should be identified by an asterisk to show that they include estimates. Adjustments should be made in subsequent quarterly financial reports by netting the effects of the adjustments made into the information reported for the current report quarter; it will not be necessary to amend previously submitted financial reports except in those instances where the error reported was in a final report for a terminated program.

(vi) *Amounts reported.* All amounts are to be rounded to the nearest dollar. Do not report cents.

(vii) *Delegate agency responsibilities.* Delegate agencies are required to provide their parent organizations with all data needed to prepare quarterly financial reports which will include cash balances and expenditures of the delegate agencies.

(2) *Other financial report requirements.* An administrative costs report is required annually. See OEO Instruction 6807-1 for detailed procedures for completing and submitting CSA Form 315d, Administrative Costs Report.

(3) *Availability of forms.* Supply of referenced forms are available upon written request to: CSA Publications and Distribution Center, 5458 3rd Street NE., Washington, DC 20001.

Subpart I—Monitoring and Reporting Performance (CSA Instruction 6800-9)

SOURCE: 42 FR 43843, Aug. 31, 1977, unless otherwise noted.

§ 1050.80-1 Applicability.

This subpart applies to all grants made to public and private organizations/agencies under Titles II and III-B of the Economic Opportunity Act of 1964, as amended when such assistance is administered by the Community Services Administration.

§ 1050.80-2 Standard.

(a) *Monitoring responsibilities (grantee)*. (1) Grantees shall monitor their performance under grants and other agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each project, function, or activity of each agreement as set forth in the approved application or awarded document.

(2) Grantees shall submit a performance report for each agreement that briefly presents the following information for each project, function, or activity involved as prescribed by CSA.

(i) A comparison of actual accomplishments with the goals established for the period, the findings of the investigator or both. If the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(ii) Reasons why established goals were not met.

(iii) Other pertinent information including, where appropriate, analysis and explanation of cost overruns of high unit costs.

(3) (NOTE: See CSA's implementing regulations (§ 1050.80-3) for further details.)

(b) *Submission of Performance Reports.* (1) The Uniform Federal Standards require, except as provided in paragraphs (b)(2) (i), (ii), and (iii), of this section, that grantees shall submit performance reports to CSA covering the same reporting period as the Financial Status Report. CSA will require that performance reports be submitted to cover the same period as the financial reports but with less frequency. (See § 1050.80-3 for frequency of reports and reporting dates.) CSA will also require a final performance report for grants with a fixed termination date. However, neither CSA nor any other Federal sponsoring agency may require reports more frequently than quarterly or less frequently than annually.

(2) CSA may waive the requirement that performance reports be submitted with the financial reports under the following circumstances:

(i) When the grantee is required to submit a performance report with a continuation or renewal application.

(ii) When CSA determines that onsite technical assistance and certified completion data will be sufficient to evaluate construction projects.

(iii) When CSA finds it necessary to get an annual progress report on a calendar basis although its usual submission requirements are based on the grantee's program year or other funding period.

(c) *Special reporting requirements (Grantee).* (1) Between the required performance reporting dates, events may occur that have significant impact upon the project or program. In such instances, the grantee shall inform the appropriate CSA administering office by letter as soon as the following types of conditions become known;

(i) Problems, delays or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(ii) Favorable development or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.

(2) If any performance review conducted by the grantee discloses the need for change in the budget esti-

mates in accordance with the criteria established in 1050.100 (CSA Inst. 6800-11) the grantee shall submit a request for budget revision.

(d) *On-Site Review (CSA)*. CSA will make site visits as frequently as practicable to:

(1) Review program accomplishments and management control systems; and

(2) Provide such technical assistance as may be needed.

§ 1050.80–3 CSA implementing policies and procedures.

(a) *Policy.* (1) CSA would like to see its grantees established as independent, self-reliant and viable institutions within their communities. At the same time it recognizes a need for strengthening the accountability of grantees both to their communities and to CSA as the funding agency.

(2) CSA believes that regular internal self-assessments of project progress conducted by or under the direction of the grantee board or governing officials are essential to the effective operation of community-based anti-poverty programming and requires that grantees report the results of such self-assessments to the appropriate CSA Administering Office. (See paragraph (c) of this section.)

(b) *What is a Project Progress Review?* (1) A Project Progress Review (PPR) is the last link in closing the circle which includes planning, grant application, and implementation. A Project Progress Review requires that a grantee look both to the past and to the future—to the past to the conditions which existed before applying for CSA funds, what the board said it was going to do in the application for funds in order to deal with those conditions, and what has been done; and to the future to determine how the information gathered in the Review and the conclusions reached can be used to revise the goals for the remainder of the Program Year if necessary and/or affect the work program for the coming Program Year(s).

(2) *Definition.* A Project Progress Review (PPR) is a process carried out by a grantee in order to determine:

(i) What has been accomplished in meeting the locally set goals as shown in the grantee's work program;

(ii) The extent to which the grantee is achieving the broad purposes of community action as set forth in the Economic Opportunity Act and, for CAAs, the "Mission of the Community Action Agency";

(iii) The extent to which the grantee is meeting the general and specific standards of effectiveness described in CSA Instruction 7850-1a; and

(iv) How efficiently grantee planning, project management and overall administration is carried out in addressing the problems of poverty.

(3) What a PPR System Should Contain. (i) The grantee Board of Directors or Governing Officials should assure that the grantee has developed a project review system that contains, at a minimum, the following:

(A) A clear statement of the roles of all participants in the Review process, i.e. the Board itself (or governing officials, where appropriate), the executive director, other grantee staff, policy advisory committee(s), target area residents, and the community-at-large;

(B) The assignment of responsibilities and allocation of resources for designing the Review, gathering the information and analyzing it, developing the final report(s), and deciding how the findings will be used in making decisions;

(C) An adequate system for routinely collecting data which can be useful in the Reviews;

(D) A description of how the findings and recommendations from the reviews will be used in making or planning changes to on-going or future projects and to improve the management of these projects and the agency as a whole; and

(E) A schedule for holding regular Project Progress Reviews and special reviews of issues and projects that are or have become a priority in the Community.

(ii) Board members should actively participate in each Project Progress Review. In addition, the poor must also be involved in all phases including the preparation and review of the

PPR reports. (See OEO Instruction 6005-1.)

(c) *How and when to submit reports*—(1) *Reporting Format.* (i) Grantees will prepare reports using CSA Form 440. (See Attachment A.) Each PPR report will provide an analysis of accomplishments in relation to each goal on the grantee's currently approved work program and will detail problems, planned changes and training and technical assistance needs. In addition, effectiveness of each goal will be assessed by relating the progress made toward achieving the goal to the appropriate Standard(s) of Effectiveness.

(ii) Grantees funded under section 232 may be requested by the Administering Office to prepare a report in narrative form instead of using CSA Form 440. In such cases the requirement will be stated in the Special Conditions attached to the grant. These Conditions will also detail the information required which will include, at a minimum, a comparison of actual accomplishments with goals of the work program and an assessment of effectiveness.

(iii) In order to assure that the quantifiable data being reported for programs funded under section 222(a) of the Economic Opportunity Act are uniform, CSA requires that Section 1.A. (measurable accomplishements) on the Form 440 includes all relevant data i.e., data resulting from activities undertaken as part of the work program, as indicated under the appropriate Program Account in Attachment B to this subpart.

(2) *Frequency*—(i) *Submission dates.* (A) Except as indicated in paragraph (c)(2) (ii) and (iii) of this section each grantee is responsible for submitting to the appropriate CSA Administering Office a semi-annual and an annual Project Progress Report. Reports will be submitted 30 working days following the end of the second and fourth quarters of the grantee's Program Year of Program Account 01. (If not funded for PA 01, grantee should use its highest funded Program Account as a reference point for submission of PPR reports.)

(B) Administering Offices and grantee officials may jointly agree in writing, to adjustments in the above reporting dates where this will make local progress reviews more meaningful and supportive of the mutual program direction and review objectives of the grantee and administering office. Also the administering office may reduce the frequency of reporting. However, except at the request of the grantee, the period covered by the PPR must always conform to that covered by the financial reports.

(ii) *Grants with termination dates.* If a grant has a termination date, the grantee also is responsible for filing a final Project Progress Report within 90 calendar days following the termination date.

(iii) *Special requirements.* There may be instances where more frequent reporting will be required, e.g. in the cases of developmental grants; when the grantee has a history of poor performance; etc. In these instances the funding office may require, as a condition of the grant, that Project Progress Reports be filed on a quarterly basis. However, in keeping with the Standards, reporting cannot be required more frequently than quarterly unless an exception is obtained by CSA (Headquarters) from OMB. It should be noted that more frequent reporting is not intended to be imposed routinely but rather on an exception basis such as when the aforementioned circumstances exist.

(3) *Number of Copies.* One copy of the report is to be sent to the appropriate CSA Administering Office. (Grantees receiving grants which are administered by both a Regional Office and a Headquarters Program Office will send a copy of the PPR to each.) Additionally, grantees receiving funds under sections 221 and 222(a) of the Act shall send one copy to the appropriate SEOO for information.

(4) *Availability of CSA Form 440.* Supplies of CSA Form 440 may be ordered from:

CSA Distribution Center, 49 "L" Street SE.,
Washington, DC 20003.

[42 FR 43843, Aug. 31, 1977, as amended at 44 FR 61347, Oct. 25, 1979]

ATTACHMENT A

Page 1 Page—— of——

COMMUNITY SERVICES ADMINISTRATION PROJECT PROGRESS REVIEW REPORT	(*Check applicable box*) ☐ 1st Qtr. ☐ 2nd Qtr. ☐ 3rd Qtr.	☐ ANNUAL ☐ FINAL	*Reserved for OMB Approval* DATE SUBMITTED

NAME OF GRANTEE GRANTEE NO.

PROGRAM ACCOUNT PROJECT TITLE

Information, Referral and Follow-up

PROJECT GOAL—To provide outreach, referral and follow-up services to 650 low-income target area residents using neighborhood center staff, Policy Advisory Committees and minimum of 25 volunteers

STANDARD(S) OF EFFECTIVENESS, (No.) A-II, III, IV, V.

1. ACCOMPLISHMENTS

A. MEASURABLE—During this period, 30 volunteers assisted CAA in performing outreach and home visitations. Overall, information on community programs was given directly to 500 residents; 350 were referred to other organizations for assistance; follow-up was conducted on 200 of these.

B. NON-QUANTIFIABLE—The County Department of Human Services has formally requested the CAA to perform outreach for Title XX, Community Development and Food Stamp programs, CAA is doing preliminary eligibility screening for these programs to speed up processing. County-wide computerized I&R system is being considered by County Commission.

2. PROBLEMS

Low attendance at Policy Advisory Committee meetings. No quorum for three of last four meetings. Three PAC positions are vacant. Follow-ups hampered by (a) inadequate record-keeping in two centers and (b) lack of travel funds.

3. PLANNED CHANGES*

Elections will be held early next month to fill vacant PAC positions. After this SEOO will conduct training for PAC members on their roles and responsibilities. Recordkeeping system is being computerized to facilitate client "tracking." Budget is being revised to allocate more funds to travel.

4. TRAINING AND TECHINICAL ASSISTANCE NEEDS*

Outreach supervisors need training in planning center activities. PAC members need motivation; contact with Federal officials would help.

5. ASSESSMENT OF EFFECTIVENESS

Service delivery remains generally efficient (Standard A-II) but lack of participation by low-income (Std A-III) causes concern. Greater involvement of volunteers (Stds A-IV and A-V) has improved CAA's "image" in community.

*Do not complete when filing final report or in annual reports for individual projects which will not be refunded.

CERTIFICATION

The undersigned certifies that this report has been completed in accordance with applicable instructions; that it is true to the best of his/her knowledge, information and belief; and that it has been approved, or reviewed and approved, as indicated in Item 6, below.

6. THIS REPORT HAS BEEN (*Check appropriate box.*) ☐ APPROVED BY GRANTEE'S GOVERNING BOARD	☐ REVIEWED BY GRANTEE'S ADMINISTERING BOARD AND APPROVED BY ITS GOVERNING OFFICIALS	7. DATE OF APPROVAL
8. TYPED NAME & TITLE OF PRINCIPAL GOVERNING OFFICIAL OR PRINCIPAL OFFICER OF GOVERNING BOARD	9. SIGNATURE	10. DATE

CSA FORM 440 (REV. JUL 1977) (REPLACES OEO FORM 440, DATED AUG 1972, WHICH IS OBSOLETE.)

INSTRUCTIONS FOR COMPLETING CSA FORM 440

There should be a brief report for each project goal listed on the approved CSA Form(s) 419. Therefore, there should be a separate CSA Form 440 for each goal. (Note: The annual report also should give a separate summary for the entire program year for the project as a whole in addition to progress toward each goal. In this case, mark SUMMARY in the Project Goal box.)

In addressing topics 1 through 5 on the Form 440, the following information should be included for each goal;

ITEM

1. *Accomplishments:*

a. Measurable.—Describe achievements in relation to approved goals in measurable terms; include unanticipated benefits to community or target groups,

b. Nonquantifiable.—Give brief description on nonquantifiable accomplishments.

2. *Problems.*—Reasons for failure to reach project goals.

3. *Planned Changes.*[1]—Indication of planning or project management changes scheduled as a result of PPR analysis.

4. *Training and Technical Assistance Needs.*[1]—Description of assistance needed from CSA or other sources.

5. *Assessment of Effectiveness.*—Assessment of grantee status with respect to general and/or specific standards of effectiveness applicable to this goal. Appraise effectiveness in light of costs and other uses of resources.

6-10. (Certification section).—Complete this section on page 1 only of your report.

ATTACHMENT B

DATA REQUIRED IN PPR REPORTS FOR PROJECTS FUNDED UNDER SECTION (222) (A) OF THE E.O.A.

No. and Program Account

06. *Senior Opportunities and Services—Independent Living 222(a)(2).*
Total Number of Beneficiaries
Number Beneficiaries of Housing Services
Number Beneficiaries of Nutrition Services
Number Beneficiaries of Home Care Services
Number Beneficiaries of Health Services
Number Beneficiaries Elderly Day Care Services
Number Beneficiaries other Services (*e.g.* counseling, safety, education, etc.)
Total Number Elderly Community Centers
Total Number Beneficiaries of Community Centers

07. *Senior Opportunities and Services—Access 222(a)(2).*
Total Number Elderly Transported to Services
Total Number New Beneficiaries
Number New Beneficiaries SSI
Number New Beneficiaries Food Stamp
Total Number Elderly Provided Training
Total Number Elderly Provided Jobs

12. *Nutrition—Access (222)(a)(1).*
Total Number New Beneficiaries
Number New Beneficiaries Food Stamp
Number New Beneficiaries of WIC
Number New Beneficiaries of School Breakfast
Number New Beneficiaries of School Lunch
Number New Beneficiaries of Elderly Feeding
Number New Beneficiaries Summer Feeding
Total Non-CSA Dollars Mobilized
Number New Beneficiaries of Day Care Feeding
Number New Beneficiaries of other (Identify)

13. *Nutrition—Self-Help (222)(a)(1).*
Total Number Beneficiaries
Number Beneficiaries from Buying Clubs
Number Beneficiaries from Community Cannery
Number Beneficiaries from Food Gleaning
Number Beneficiaries from Food Raising
Total[2] Estimated dollar value of Above Self-Help Efforts

15. *Nutrition—Consumer Education (222)(a)(1).*
Total Number Beneficiaries

16. *Nutrition—Crisis Relief (222)(a)(1).*
Total Number Beneficiaries

21. *Energy—Weatherization (222)(a)(5).*
Total Number Beneficiaries
Total Number Units Weatherized
Number Rental Units Weatherized
Number Elderly Head of Household Units Weatherized
Total Number Persons Employed in Weatherization
Number Persons Employed using CETA Funds
Number Persons Employed using CSA Funds
Number Persons Employed using Other (Identify) Funds
Total Non-CSA Dollar Resources Mobilized

22. *Energy—Crisis Intervention (222)(a)(5).*
Total Number Beneficiaries
Number People Benefiting from Payment of Fuel Bills
Number People Benefiting from Emergency Energy Related Home Repairs

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[1] Do not complete when filing final or annual reports for individual projects which will not be continued or renewed in the next Program Year.

[2] Explain the Basis for Estimation.

Total Dollar Payment Other than Home Heating Payments
Total Number Households Assisted
Number Elderly Head of Households Assisted
Number Rental Households Assisted
23. *Energy—Consumer Information, Education and Legal Assistance* (222)(a)(5).
Total Number Beneficiaries
Number Beneficiaries 18 years and under
Number Beneficiaries 55 years and over
25. *Energy—Alternative Technologies* (222)(a)(5).
Total Number Beneficiaries
Number Beneficiaries of Solar Space Heating
Number Beneficiaries of Solar Domestic Water Heating
Number Beneficiaries of Wind Technology
Number Beneficiaries of Methane/Alcohol
Number Beneficiaries of Wood/Coal Stove
Number Beneficiaries of other (Describe)
Total Number Persons Employed
Number Employed with CETA Funds
Number Employed with CSA Funds
Number Employed with Other Funds
31. *Rural Housing—Housing Production* (222) (a)(4).
Total Number Housing Units
Number Units Constructed
Number Units Repaired and Rehabilitated
Total Non-CSA Dollars Mobilized
32. *Rural Housing—Access to Federal Home Loan Service* (222)(a)(4).
Total Number Loans and Grants
Number Loans and/or Grants Submitted
Number Loans and Grants Approved
Total Dollar Amount Approved Loans and/or Grants
Total Number Persons Trained
Number Trained with CETA Funds
Number Trained with CSA Funds
Number Trained with Green Thumb Funds
Total Non-CSA Dollars Mobilized
Number Trained with Other Funds (Identify)
33. *Rural Housing Training and Technical Assistance* (222)(a)(4).
Total Number of Beneficiaries Trained and/or Provided Technical Assistance
34. *Rural Housing—Small Town Community Development* (222)(2)(4).
Total Number of Public Officials Trained and/or Provided Technical Assistance
35. *Rural Housing—Housing Consumer Assistance* (222)(a)(4).
Total Number of Beneficiaries
36. *Rural Housing—Management Services* (222)(a)(4).
Total Number Beneficiaries Counselled
Total Number Housing Units Managed
80. *Energy—Emergency Energy Assistance* (222)(a)(5).
Total Number Beneficiaries
Total Number Households Assisted
Number Elderly Head of Households
Number Rental Households Assisted
Total Dollar Payment Heating Fuel Bills
Dollar Payment Oil Heating Fuel Bills
Dollar Payment Gas Heating Fuel Bills
Dollar Payment Electricity Fuel Bills
Dollar Payment Other Fuel Bills

[44 FR 61347, Oct. 25, 1979]

Subpart J—Payment Requirements (CSA Instruction 6800-10)

§ 1050.90 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment I).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment J).

(3) OEO Instruction 6806-05, Limitations on Program Expenditures.

(4) CSA Instruction 6800-12, Grant Closeout Procedures (Uniform Federal Standard) (45 CFR 1050.110).

(5) CSA Instruction 6800-13, Suspension and Termination Procedures (Uniform Federal Standard) (45 CFR 1050.120).

(6) CSA Instruction 6710-1, Change 10, "Preparation of CSA Form 314, Statement of CSA Grant."

(7) Treasury Department Circular No. 1075, as revised, "Regulations Governing Withdrawal of Cash From the Treasury for Advance Under Federal Grant and Other Programs."

(8) Treasury Fiscal Requirements Manual, Part VI, "Other Fiscal Matters."

§ 1050.91 Definitions.

(a) *Letter-of-Credit.* A Letter-of-Credit is an instrument certified by an authorized official of a Federal funding agency that authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve bank and the grantee's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.

(b) *Advance by Treasury check.* An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request before outlays are made by the grantee or through the use of predetermined payment schedules.

(c) *Reimbursement by Treasury check.* A reimbursement by Treasury check is a Treasury check paid to a grantee upon request for reimbursement from the grantee.

§ 1050.92 Standard.

(a) Payments can be made to grantees through a letter-of-credit and an advance by Treasury check.

(b) Except for construction grants and other construction agreements for which optional payment methods are authorized, as described in paragraph (d) of this section, the letter-of-credit method shall be used by CSA if all of the following conditions exist:

(1) If there is or will be a continuing relationship between a grantee and CSA for a least a 12 month period and the total amount of advance payments expected to be received within that period from CSA is $120,000 or more, as prescribed by Treasury Circular No. 1075. For joint funded projects the Treasury has authorized a dollar criteria of $120,000.

(2) If the grantee has established or demonstrated to CSA the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) If the grantee's financial management system meets the standards for fund control and accountability prescribed in 45 CFR 1050.60 (CSA Instruction 6800-7, Standards for Financial Management Systems.)

(c) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph (b) of this section, except those in paragraph (b)(1) of this section.

(d) A reimbursement by Treasury check shall be the preferred method if the grantee does not meet the requirements specified in paragraphs (b)(2) and (b)(3) of this section. At the option of CSA this method may also be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, CSA shall make payment within thirty days after receipt of the billing unless the billing is improper.

(e) When the letter-of-credit procedure is used, the grantee shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants and other agreements awarded by the sponsoring agency.

(f) (1) Unless otherwise required by law, CSA shall not withhold payments for proper charges made by grantees at any time during the project or program period unless (i) a grantee has failed to comply with the program objectives, general or special conditions, or CSA reporting requirements; or (ii) the grantee is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States. (See § 1050.110 and § 1050.115 (CSA Instructions 6800-12 and 6800-13) for procedures in cases of closeouts, suspensions and terminations).

(2) Under such conditions, CSA may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

[42 FR 18034, Apr. 4, 1977, as amended at 43 FR 44532, Sept. 28, 1978]

§ 1050.93 CSA implementing policies and procedures.

(a) *Policy.* Federal funds awarded under CSA grants will be made available (advanced) by letter of credit or by check, depending upon the amount of the grant. Funds for grants of less than $120,000 annually will be advanced by the periodic issuance of Treasury checks. Funds for grants of over $120,000 and where there is an anticipated continuing relationship for one year will be made available through the issuance of a Treasury Department Letter of Credit.

(b) *Grants under $120,000 annually.* (1) Fund advances for grants totaling less than $120,000 annually will be made by a monthly check to the grantee. The amount of the monthly check will be computed based upon a grantee's anticipated rate of expenditure over the period of the grant, and subject to adjustment based upon an analysis of the required quarterly financial reports from the grantee. All Treasury checks will reflect the grantee number and the grant action to which the funds pertain. In the event subsequent funding actions result in a grantee's annual funding level to exceed $120,000, he will be notified that his funding procedures are to be changed and the necessary forms for conversion to Letter of Credit procedures will be sent.

(2) *Special checks.* (i) When a grantee anticipates needing cash in excess of that provided by the issuance of a monthly check, he must submit a written justification to the appropriate administering office for review and subsequent submission to the Finance and Grants Management Division, Headquarters, if approval is recommended.

(ii) Before approving issuance of a special check, the Finance and Grants Management Division will review current expenditure rates and cash balances reported on the financial reports. Delays in submission of these reports to CSA will result in delays in approval of special checks.

(c) *Grants over $120,000 annually.* When a letter-of-credit is issued the grantee will not be required to maintain a separate bank account for funds obtained in this manner except in those cases where the letter-of-credit agreement provides that draw downs will be made when the grantee's checks are presented to the bank for payment. Grantees will delay, to the extent possible, all drawdowns on the letter-of-credit until after their organizations have issued checks for disbursements properly chargeable to Federal funds.

(1) *Letter of credit procedure*—(i) *Selection of commercial bank.* (A) Grantees shall select a commercial bank which will agree to receive Payment Vouchers on Letter of Credit (TUS 5401) drawn on the Treasurer of the United States and forward these vouchers to the applicable Federal Reserve Bank or branch. In addition the grantee will assure that they comply with the Uniform Federal Standards applying to cash depositories (See § 1050.10 (CSA Instruction 6800-2).) The grantee shall notify the Finance and Grants Management Division, CSA Headquarters, of the name of the commercial bank, title of the bank account, and location of the applicable Federal Reserve Bank or branch.

(ii) *Authorized signature card.* (A) The Finance and Grants Management Division in Headquarters or Financial Services Branch in the regions will send the grantee three Standard Forms 1194, Authorized Signature Card for Payment Vouchers on Letters of Credit, as part of the grant package. When properly completed by the grantee, these cards will provide the appropriate Federal Reserve Bank or branch with specimen signatures of grantee officials authorized to sign Payment Vouchers on Letter of Credit or withdrawal of funds. A sample copy of SF 1194 and instructions for completion are provided in Exhibit II.

(B) Two copies of the properly completed signature card will be returned, with all other required documents, to the Finance and Grants Management Division, CSA Headquarters, or to the Financial Service Branches in regional offices, depending on whether the grant is administered by CSA Headquarters or by a regional office.

(C) A change of persons authorized to sign payment vouchers or a change in grantee name, address, or commercial bank will require that a grantee submit a new set of signature cards to the Headquarters Finance and Grants Management Division.

Blank signature cards may be obtained from that office or from the Financial Services Branches in the regional offices.

(D) The Finance and Grants Management Division, or the Financial Services Branches for regional grants, will notify the grantee when the signature cards and letter of credit have been sent to the Federal Reserve Bank or Branch via the Treasury Department. The grantee will not present a payment voucher which includes the new or changed information until it has received such notification. The grantee should assure that it has sufficient funds for operating until receipt of the notification.

(E) Each letter of credit must have its own signature card. If there is a need to change a prior signature card for a specific grant, a new signature card must be submitted to the Finance and Grants Management Division, CSA Headquarters.

(F) Grantees must provide signatures for at least two persons in order to enable the proper completion of the payment voucher (Form TUS 5401).

(*1*) *Withdrawal of funds.* (*i*) As funds are needed, the grantee will prepare and submit the original, duplicate, and triplicate copies of the Payment Voucher on Letter of Credit (Forms TUS 5401) to its commercial bank.

The commercial bank will transmit all forms to the Federal Reserve Bank or branch. The recipient organization will retain the quadruplicate copy for its own records. Instructions for preparing the form are provided in Exhibit III.

(*ii*) A supply of Forms TUS 5401 will be sent to each grantee with the letter-of-credit. Additional forms may be obtained by writing to the Finance and Grants Management Division, CSA Headquarters. Payment vouchers are preprinted with CSA's name and station symbol. They cannot be used for withdrawals from letters-of-credit issued by other Federal agencies. Only Forms TUS 5401 received from CSA may be used for withdrawal of funds from CSA letters-of-credit.

(*iii*) *Guidelines for withdrawal.* The U.S. Treasury Department policy provides that withdrawals by grantees shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements needed in carrying out the purpose of the approved program or project. Where a grantee makes advances to a delegate agency, they shall conform substantially to the same standards of timing and amount as applicable to advances to the primary grantee. Grantee drawdowns shall not ordinarily be made more frequently than daily in order to maintain a minimum amount of cash on hand. However, the amount withdrawn may not exceed the dollar limitation placed on the letter-of-credit by CSA without prior CSA approval. Ordinarily, withdrawals should not be made for less than $10,000 nor for more than $1,000,000, and in no case in excess of $5,000,000 unless authorized by CSA, and should never exceed the amount of cash needed to operate for a thirty (30) day period.

ATTACHMENT—EXHIBIT I

LETTER OF CREDIT NUMBER

[Auth: TREASURY DEPARTMENT CIRCULAR No. 1075. Revised]

(1) ISSUING AGENCY LETTER, Community Services Administration, 1200 19th Street NW., Washington, DC 20506		LETTER OF CREDIT (2) ——— AMENDMENT NUMBER ——— (3)
AGENCY STATION SYMBOL 81-00-9701 ——— (4)	(FOR AGENCY USE) ——— (5)	EFFECTIVE DATE ——— (6)
TO: The Federal Reserve Bank, ——— (7)	BRANCH BANK AT ——— (8)	

In accordance with the authorization of the Fiscal Assistant Secretary, Treasury Department, there is hereby authorized for the account and responsibility of the issuing agency a letter of credit.

FOR DEPOSIT ONLY TO

IN FAVOR OF ——— (9)		(10) Recipient's	ACCOUNT
AMOUNT AUTHORIZED $———(11)	☐ EACH MONTH, ☐ EACH QUARTER, ☐ WITHOUT TIME LIMIT, ☐ ——— (12)	PRIOR AUTHORIZATION $ ——— (13)	THIS CHANGE Increase $ ——— (14) Decrease $———

(15)

☐ The unpaid balance of this letter of credit will remain available until you are advised in writing by the Treasury Department that this letter has been revoked.*

LETTER OF CREDIT NUMBER—Continued

[Auth: TREASURY DEPARTMENT CIRCULAR No. 1075. Revised]

OR

☐ The unpaid balance of this letter of credit is revoked at the end of each period indicated and the full amount reestablished at the beginning of the following period until you are advised in writing by the Treasury Department that this letter has been revoked.*

The amount of this letter of credit is hereby certified to be drawn against, upon presentation to you of Form TUS 5401, Payment Voucher on Letter of Credit, by the official(s) of the recipient organization whose signature(s) appear(s) on the Standard Form 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, attached hereto or previously or subsequently furnished you through the Treasury Department.

The amount of each payment voucher paid by a Federal Reserve Bank or branch to a designated commercial bank for credit to the account of the recipient organization shall constitute payment to the recipient organization by the United States.

I certify to the Treasury Department that the payments authorized herein are correct and proper for payment from the appropriations or funds legally committed and available for the purpose, when paid in accordance with the terms and conditions cited above.

*This letter of credit is irrevocable to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement.

DATE CERTIFIED ....

(16) AUTHORIZED CERTIFYING OFFICER ....

TYPED NAME AND TITLE..........

1193-103

EXHIBIT I

EXPLANATION OF INFORMATION ON LETTER OF CREDIT

1. *Issuing Agency.* Name and address of CSA Headquarters.

2. *Letter of Credit Number.* Number assigned by the agency to identify a particular Letter of Credit.

3. *Amendment Number.* This will represent a change to letter of credit.

4. *Agency Station Symbol.* The No. 81-00-9701 is the number assigned the Treasury Department to identify CSA Letters of Credit. It will appear on all Letters of Credit issued by CSA.

5. *For Agency Use.* Shows grantee identification number and grant action number.

6. *Effective Date.* Effective date of the Letter of Credit.

7. *To the Federal Reserve Bank.* Location of Federal Reserve Bank serving Federal Reserve Branch Bank.

8. *Branch Bank at.* Location of Federal Reserve Branch serving grantee's commercial bank.

9. *In Favor of.* Name and address of grantee, same as shown on the signature card and the CSA Form 314, Statement of CSA Grant.

10. *For Deposit Only to.* Name and address of commercial bank and recipient's account.

11. *Amount Authorized.* This space will be left blank.[1]

12. *Without Time Limit.* This space will be left blank.[1]

13. *Prior Authorization.* This space will be left blank.[1]

14. *This Change.* The amount of increase or decrease authorized by this Letter of Credit amendment.

15. This space will be left blank.[2]

16. *Authorized Certifying Officer.* Signature of authorized CSA official.

NOTES

[1] Item 11, "Amount Authorized," equals item 13 "Prior Authorization," plus or minus item 14, "This Change."

[2] The Grant Accounting Branch, Finance and Grants Management Division, will complete Items 11, 12, 13, 14, and 15 before submitting a letter of credit to the U.S. Treasury.

ATTACHMENT—EXHIBIT II

AUTHORIZED SIGNATURE CARD FOR PAYMENT VOUCHERS ON LETTER OF CREDIT

[Standard Form 1194, 6 Treasury FRM 1000, Fiscal Service, Bureau of Accounts]

Letter of Credit Number (1)	Federal Reserve Bank (2)
Letter of Credit Issued in Favor of (*Recipient*)	Issued by (*Federal Agency*)

AUTHORIZED SIGNATURE CARD FOR PAYMENT VOUCHERS ON LETTER OF CREDIT—Continued

[Standard Form 1194, 6 Treasury FRM 1000, Fiscal Service, Bureau of Accounts]

(3)	(4)
(5) Signatures of Individuals Authorized to Draw on the Cited Letter of Credit	☐ Only one Signature Required on Payment Vouchers or ☐ Any Two Signatures Required to Sign or Countersign
Typed Name and Signature (6)	Typed Name and Signature (6)
Typed Name and Signature (6) I certify that the signatures above are of the individuals authorized to draw payment vouchers for the cited letter of credit. (7)	Typed Name and Signature (6) APPROVED: (8)
Date and Signature of Authorizing Official (Recipient)	Date and Signature of Agency Certifying Officer

COMPLETION OF SIGNATURE CARDS

Following are instructions for completing the Signature Cards:

1. *Letter of Credit Number.* When establishing a new Letter of Credit the Finance and Grants Management Division will complete this block prior to sending the forms to the grantee for signatures. To request a change of signatures shown on a previous Form 1194, the grantee should indicate, in this block, the assigned Letter of Credit number.

2. *Federal Reserve Bank.* The name of the Federal Reserve Bank or branch, as the case may be, that will serve the grantee's commercial bank will be entered by the Finance and Grants Management Division.

3. *Letter of Credit Issued in Favor of (Recipient).* Enter full name and address of grantee organization. Include city, state and zip code. This must agree with the information on the Statement of CSA Grant (CSA Form 314). If any of the information on the CSA Form 314 is incorrect, contact processing unit before completing the Form 1194.

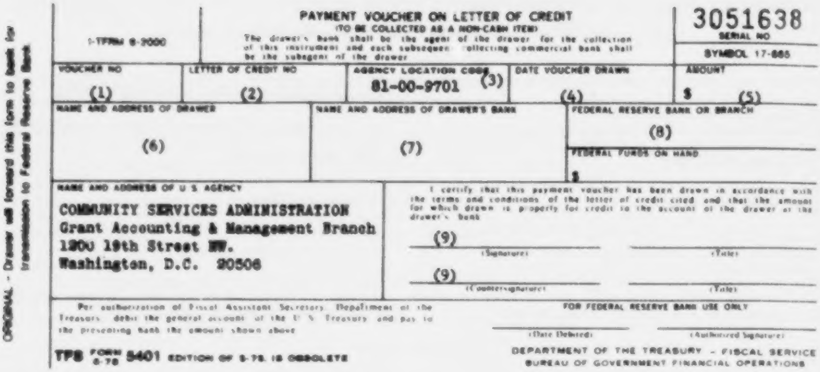
4. *Issued by (Federal Agency).* The Community Services Administration, 1200 19th Street, NW., Washington, DC 20506; Code 81-00-9701.

5. *Signatures of Individuals,* etc. Mark X in space to indicate "any two signatures required to sign or countersign."

6. *Typed Name and Signature.* Enter the typed names and signatures of at least two (and preferably more than two) individuals authorized to sign payment vouchers (Form TUS-5401) to withdraw funds from Letter of Credit. The typed names must appear exactly as the individuals sign their names.

7. *Certification Block. Date and Signature of Authorized official* (Recipient). Date and sign. The signature should be that of the grantee official authorized to certify that the signatures are those of persons authorized to withdraw funds from the Letter of Credit.

8. *Approved.* Leave this space blank for CSA use.



ORIGINAL - Drawer will forward this form to bank for transmission to Federal Reserve Bank

I-TFRM 6-2000

PAYMENT VOUCHER ON LETTER OF CREDIT
(TO BE COLLECTED AS A NON-CASH ITEM)
The drawer's bank shall be the agent of the drawer for the collection of this instrument and each subsequent collecting commercial bank shall be the subagent of the drawer

3051638
SERIAL NO
SYMBOL 17-885

VOUCHER NO	LETTER OF CREDIT NO	AGENCY LOCATION CODE	DATE VOUCHER DRAWN	AMOUNT
(1)	(2)	81-00-9701 (3)	(4)	$ (5)

NAME AND ADDRESS OF DRAWER	NAME AND ADDRESS OF DRAWER'S BANK	FEDERAL RESERVE BANK OR BRANCH
(6)	(7)	(8)
		FEDERAL FUNDS ON HAND $

NAME AND ADDRESS OF U S AGENCY

COMMUNITY SERVICES ADMINISTRATION
Grant Accounting & Management Branch
1200 19th Street NW.
Washington, D.C. 20506

I certify that this payment voucher has been drawn in accordance with the terms and conditions of the letter of credit cited and that the amount for which drawn is properly for credit to the account of the drawer at the drawer's bank

(9) ____________ (Signature) ____________ (Title)

(9) ____________ (Countersignature) ____________ (Title)

Per authorization of Fiscal Assistant Secretary, Department of the Treasury, debit the general account of the U. S. Treasury and pay to the presenting bank the amount shown above

FOR FEDERAL RESERVE BANK USE ONLY

____________ (Date Debited) ____________ (Authorized Signature)

TFS FORM 6-78 5401 EDITION OF 5-75 IS OBSOLETE

DEPARTMENT OF THE TREASURY - FISCAL SERVICE
BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

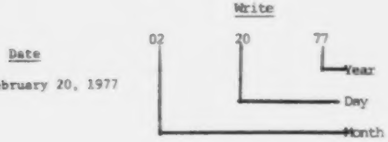
PREPARATION OF FORM TUS 5401

(1) *Voucher Number.* Grantees will number payment vouchers consecutively beginning with "1". Alphabetical designations will not be used as part of the voucher number. Amendments to the Letter of Credit will not interrupt the consecutive numbering of payment vouchers by the grantee.

(2) *Letter of Credit Number.* Enter the assigned Letter of Credit number. This is the eight-digit number shown on the Letter of Credit received from CSA.

(3) *Agency Station Symbol.* This is an eight-digit code assigned to CSA by the U.S. Treasury Department and is pre-printed on the vouchers sent to grantees.

(4) *Data Voucher Drawn.* Enter the date voucher is prepared and presented to the bank. To facilitate entering this date on a computer, the date must be written as follows:



(5) *Amount.* Enter the dollar amount to be withdrawn. Round off to hundreds or thousands of dollars.

Example: $35,500.00.

(6) *Name and Address of Drawer.* Complete name and address of grantee, including zip code, as shown on the Letter of Credit.

(7) *Name and Address of Drawer's Bank.* Enter name and address of the bank to which the payment voucher will be presented.

(8) *Federal Reserve Bank or Branch.* Enter name (city) of Federal Reserve Bank or Branch as shown on Letter of Credit.

(9) *Signatures.* Vouchers must be signed by two of the designated signees exactly as their signatures appear on current signature cards.

DISTRIBUTION OF PAYMENT VOUCHERS

Original, duplicate and triplicate: Presented to grantee's bank for payment. The Bank will retain the original and forward the duplicate and triplicate to the Federal Reserve Bank for their records.

Quadruplicate: Retain for grantee files.

[42 FR 18034, Apr. 4, 1977, as amended at 43 FR 44532, Sept. 28, 1978]

Subpart K—Revision of Financial Plans [Reserved]

Subpart L—Grant Closeout Procedures (CSA Instruction 6800-12)

§ 1050.110 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment K).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment L).

(3) OEO Instruction 6302-2, CAAs: Eligibility and Establishment.

(4) OEO Instruction 6730-1, Denial of Application for Refunding.

(5) CSA Instruction 6800-4, Retention and Custodial Requirements for Records. (45 CFR § 1050.20). (Uniform Federal Standard.)

(6) CSA Instruction 6800-5, Program Income. (45 CFR 1050.40.) (Uniform Federal Standard.)

(7) CSA Instruction 6800-8, Financial Reporting Requirements. (45 CFR 1050.70.) (Uniform Federal Standard.)

(8) CSA Instruction 6800-9, Monitoring and Reporting Requirements. (45 CFR 1050.70.) (Uniform Federal Standard.)

(9) CSA Instruction 6800-10, Payment Requirements. (45 CFR 1050.90.) (Uniform Federal Standard.)

(10) CSA Instruction 6800.11, Revision of Financial Plans. (45 CFR 1050.100.) (Uniform Federal Standard.)

(11) CSA Instruction 6800-13, Suspension and Termination Procedures. (45 CFR 1050.115.) (Uniform Federal Standard.)

(12) CSA Instruction 6800-15, Property Management Standards. (45 CFR 1050.130.) (Uniform Federal Standard.)

(13) OEO Instruction 6801-1, and Changes 1 and 2, Grantee Fiscal Responsibility and Auditing.

(14) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B, and VII of the EOA of 1964 as amended. (45 CFR 1067.5.)

§ 1050.111 Definitions.

(a) "Closeout"—The closeout of a grant is the process by which CSA determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and CSA.

(b) "Date of completion"—The date of completion is the date on which all work under the grant is completed or the date on the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) "Disallowed costs"—Disallowed costs are those charges to a grant which CSA determines to be unallowable in accordance with the applicable Federal cost principles, other conditions contained in the grant agreement and CSA Instructions.

§ 1050.112 Standards.

The following requirements shall be applicable to the closeout of all CSA grants:

(a) Upon request, CSA shall make prompt payments to the grantee for allowable reimbursable costs under the grant being closed out.

(b) Within 90 calendar days after completion of a grant, the grantee shall refund any balance of unobligated cash that CSA has advanced or paid, and that is not authorized to be retained by the grantee for use in other grants or for other purposes specifically authorized in writing by CSA. A check (payable to CSA) will accompany the final financial report. (See reference (7) for procedures.)

(c) Within 60 calendar days after the completion of a grant, the grantee shall submit to the Office of Community Services (OCS) all financial, performance, and other reports required as conditions of the grant, except public grantees shall submit such required reports within 90 days of the grant's completion. (See references (7), (8), and (13) for procedures.) All audit reports must be addressed to the Office of the Inspector General, CSA/OCS, Department of Human Services, Room 548, 1200 19th Street, NW., Washington, DC 20506. All other required reports must be addressed to the Office of Community Services, Department of Health and Human Services, 1200 19th Street, NW., Washington, DC 20506. A grantee may request an extension of this deadline from the appropriate office. An extension of up to 30 days will be granted to a non-public grantee upon a showing of reasonable cause that the grantee, despite special efforts, cannot submit the required reports within 60 days. Further extensions for non-public grantees or any extensions for public grantees will be granted only in extra-ordinary circumstances.

(d) When authorized by the grant agreement, CSA shall make a settlement for any upward or downward adjustment to the Federal share of costs after these reports are received.

(e) The closeout of a grant shall not, of itself, end or otherwise affect: (1) The grantee's responsibility to account for any property acquired with Federal funds, or received from the Government, in accordance with the provisions of § 1050.130 (CSA Instruction 6800-15) Property Management Standards;

(2) The grantee's responsibility to account for program income in accord-

ance with the provisions of § 1050.40 (CSA Instruction 6800-5);

(3) The retention period for, or Federal rights of access to, grant records pursuant to § 1050.20 (CSA Instruction 6800-4).

(f) In the event a final audit has not been performed prior to the closeout of the grant, CSA retains the right to recover an appropriate amount, after fully considering the recommendations on disallowed costs resulting from any subsequent audit which may be performed. (See reference (13) for CSA audit requirements.)

[42 FR 18034, Apr. 4, 1977, as amended at 47 FR 22535, May 25, 1982]

§ 1050.113 CSA implementing policies and procedures.

(a) *General.* Procedures for various activities to be undertaken in closeouts will be found in references (3) through (14). This subpart provides additional detail on required closeout procedures relating to audits. (See reference (13) for basic procedures.)

(b) *Closeout Audits*—(1) *Scope of Audit.* (i) Within 60 days after the date of completion of a CSA grant, the grantee must submit a final audit of grant operations, except that the final audit for public grantees shall be submitted within 90 days after the grant's completion. Audit reports must be directed to the Office of the Inspector General, CSA/OCS, at the address specified in § 1050.112(c). Final audits shall be conducted in accordance with the Accounting System Survey and Audit Guide, CSA Manual 2410-1, except that the scope of the audit shall be adjusted as follows:

(A) The independent auditor will not be required to render an appraisal of the grantee's accounting system and internal controls. However, he will be required to review internal accounting controls in accordance with generally accepted auditing standards to ascertain the degree of reliance he can place on them in determining the extent of his audit tests and procedures. Therefore, the audit report will normally contain no comments or recommendations relative to the grantee's accounting system or internal controls.

(B) The independent auditor should explain in his audit report that the grantee will not continue to receive CSA funding and will not be involved in CSA programs as a grantee.

(C) The independent auditor should emphasize in his report any action required to clear the account such as recovery of any unexpended funds or disposition of grant property.

(ii) Where questions arise in regard to the audit of CSA grantees being closed out, independent auditors should contact the cognizant CSA Regional Auditor for guidance.

(2) *Audit disallowances.* The normal CSA audit disallowance procedures as set forth in reference (13) shall be followed for audit disallowances resulting from a final audit. Final audit disallowances can only be satisfied by cash payments to CSA when the grant in question has been or is in the process of being closed out.

[42 FR 18034, Apr. 4, 1977, as amended at 47 FR 22535, May 25, 1982]

Subpart M—Suspension and Termination Procedures (CSA Instruction 6800-13)

§ 1050.115-1 References.

(1) 45 CFR 1010 (OEO Instruction 6004-01a) Nondiscrimination in Federally-Assisted Programs of the Office of Economic Opportunity—Effectuation of Title VI of the Civil Rights Act of 1964;

(2) 45 CFR 1067.2 (OEO Instruction 6730-1) Denial of Application for Refunding;

(3) 45 CFR 1050.110 (CSA Instruction 6800-12) Grant Closeout Procedures;

(4) 45 CFR 1069.3 (CSA Instruction 6910-1a) Travel Regulations for CSA Grantees and Delegate Agencies.

§ 1050.115-2 Definitions.

(a) "Termination"—The termination of a grant is the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to its date of completion. The following do not constitute termination:

(1) Withdrawal of funds awarded on the basis of grantee's under estimate of the unobligated balance in a prior grant period;

(2) Failure on the part of CSA to refund a grantee or to make a continu-

ation, extension, supplemental or other additional grant;

(3) Withdrawal of the unobligated balance as of the date of completion of a grant pursuant to the provision of CSA Instruction 6800-12 (45 CFR 1050.110);

(4) Annulment of a grant upon determination that the grant was obtained fraudulently or was otherwise illegal or invalid from inception;

(5) Withdrawal of unobligated funds from a CAA before the date of completion of its grant as a result of opt-out or de-designation proceedings under section 210 of the Economic Opportunity Act of 1964 as amended, and OEO Instruction 6302-2.

(b) "Suspension"—The suspension of a grant is an action by CSA that temporarily suspends Federal assistance under the grant, pending a decision by CSA to terminate the grant.

§ 1050.115–3 Failure to comply with grant terms and conditions.

When a grantee has materially failed to comply with the terms and conditions of a grant (including all applicable CSA Instructions), CSA may suspend the grant in accordance with § 1050.115-4, terminate it for cause in accordance with § 1050.115-5, or take such other remedies as may be legally available and appropriate under the circumstances.

§ 1050.115–4 Suspension.

When a grantee has materially failed to comply with grant terms and conditions, CSA may suspend the grant, after giving the grantee reasonable notice and opportunity to show cause why the grant should not be suspended. Pursuant to section 604(2) of the Economic Opportunity Act as amended, CSA may summarily suspend a grant without previous notice in an emergency situation. If a grant is suspended, CSA may withhold further payments and prohibit the grantee from incurring further obligations of funds, pending corrective action by the grantee or a decision by CSA to initiate termination proceedings in accordance with § 1050.115-5. CSA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension, provided that they meet the provisions of the applicable Federal cost principles (for public grantees, the applicable provisions are those of Federal Management Circular 74-4).

§ 1050.115–5 Termination for cause.

Whenever it is determined that a grantee has failed to comply with the terms and conditions of its grant, CSA may terminate the grant in whole or in part at any time prior to its date of completion. CSA shall promptly notify the grantee of the determination and the reasons for the termination, together with its effective date. Pursuant to section 604(3) of the Economic Opportunity Act of 1964, as amended, such determination shall not be made unless the grantee has been afforded the opportunity for a full and a fair hearing on the termination of its grant. Payment made to grantees or recoveries by CSA or other Federal grantor agencies under grants terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

§ 1050.115–6 Termination for convenience.

CSA or the grantee may terminate any grant in whole or in part if and only if both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties must agree on the termination conditions, including the effective date, and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated program or portion thereof after the effective date of termination and shall cancel as many outstanding obligations as possible. CSA shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to the effective date of termination.

§ 1050.115–7 CSA implementing policies and procedures governing suspensions.

(a) *Purpose and scope.* (1) This section establishes rules for the suspension of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be suspended for failure to comply with the terms and conditions of its grant, including applicable laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR 1010 (CSA Instruction 6004-01a) shall apply.

(3) Pursuant to section 604(2) of the Act and this subpart, the responsible CSA official may suspend a grant under the circumstances outlined in paragraph (a)(1) of this section. There are two kinds of suspension: (i) Suspension on notice, as provided for in paragraph (c) of this section, and (ii) summary suspension as provided for in paragraph (d) of this section. Summary suspension may be invoked only when the responsible CSA official determines that an emergency situation exists (see paragraph (d)(1) of this section).

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question, the Regional Director of the Regional Office administering the grant in question, or the designee of any of these officials.

(2) The term "summary suspension" means suspension of a grant without prior notice to the grantee.

(c) *Suspension on notice.* (1) The responsible CSA official shall notify the grantee by letter or telegram that CSA intends to suspend a grant in whole or in part unless good cause is shown why the grant should not be suspended. In such letter or telegram the responsible CSA official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(2) The responsible CSA official shall also inform the grantee of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the grantee may respond an attempt to show why such suspension should not occur. The period of time within which the grantee may submit such written material or request the informal meeting shall be established by the responsible CSA official in the notice of intent to suspend. However, in no event shall the period of time within which the grantee must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend has been sent. If the grantee requests a meeting, the responsible CSA official shall fix a time and place for the meeting, which shall not be less than 5 days after the grantee's request is received by CSA.

(3) In lieu of the provisions of paragraph (c)(2) of this section dealing with the right of the grantee to request an informal meeting, the responsible CSA official may on his own initiative establish a time and place for such a meeting. However, in no event shall such a meeting be scheduled less than 7 days after the notice of intent to suspend is sent to the grantee.

(4) The responsible CSA official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the grantee of any such extension.

(5) At the time the responsible CSA official sends the notification referred to in paragraphs (c)(1), (2), and (3) of this section to the grantee, he shall also send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in paragraph (c)(2) and (3) of this section. In addition, the responsible CSA official may in his discretion give such notice to any other delegate agency.

(6) Within 3 days of receipt of the notice referred to in paragraphs (c)(1), (2), and (3) of this section the grantee shall send a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any dele-

gate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting with the responsible CSA official contemplated herein (if not afforded a right to participate under the previous paragraphs) may request permission to do so from the responsible CSA official, who may in his discretion grant or deny such permission. In acting upon any such request from a delegate agency, the responsible CSA official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(7) In the notice of intent to suspend assistance the responsible CSA official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(8) The responsible CSA official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (c) (2) and (3) of this section as well as any showing that the grantee has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible CSA official concludes that the grantee has failed to show cause why the grant should not be suspended, he may suspend the grant in whole or in part and under such terms and conditions as he shall specify.

(9) Notice of such suspension shall be promptly transmitted to the grantee and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1050.115-8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(10) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible CSA official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the grantee has obligated them by contract or otherwise to a delegate agency.

NOTE: Willful misapplication of funds may violate section 627 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971(f) or other criminal statutes.

(11) The responsible CSA official may in his discretion modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may in the discretion of the responsible CSA official be reimposed with or without further proceedings: Provided, however, that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1050.115-8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(d) *Summary suspension.* (1) As stated in (a)(3) of this section the responsible CSA official may invoke summary suspension procedures only if he determines that an emergency situation exists because there is a serious risk of: (i) Substantial injury to or loss of project funds or property, or (ii) violation of a Federal, State or local criminal statute, or (iii) violation of section 603(b) or 613 of the Economic Opportunity Act of 1964, as amended or of CSA Instructions implementing these sections of the Act. He must also determine that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the grantee by letter or by telegram, shall become effective upon delivery to the grantee, and shall specifically advise the grantee of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the grantee to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a grantee solely because the grantee obligated them by contract or otherwise to a delegate agency.

(3) In the notice of summary suspension the responsible CSA official shall advise the grantee that it may request CSA to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the grantee requests such an opportunity, the responsible CSA official shall immediately inform the grantee in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the grantee hold an informal meeting at which the grantee may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible CSA official may proceed to initiate termination proceedings at any time even though the grant has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible CSA official shall nevertheless afford the grantee, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Notices of summary suspension shall also be furnished by the responsible CSA official and by the grantee to delegate agencies in the same manner as notices of intent to suspend as set forth in paragraphs (c) (5), (6), and (7) of this section. Delegate agencies shall have the same right to submit written material to the responsible CSA official or to participate in the informal meetings as in the case of intended suspension proceedings set forth in paragraphs (c) (5) and (6) of this section.

(5) The effective period of a summary suspension may not exceed 10 days unless termination proceedings are initiated in accordance with § 1050.115-8 or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the grantee in accordance with paragraph (d)(3) of this section requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the grantee requests an opportunity to show cause why a summary suspension action should be rescinded the suspension shall continue in effect until the grantee has been afforded such opportunity and a decision has been made. Such a decision will be made within 5 days after the conclusion of the informal meeting referred to in paragraph (d)(3) of this section. If the responsible CSA official concludes after considering all material submitted to him, that the grantee has failed to show cause why the suspension should be rescinded, the responsible CSA official may continue the suspension in effect for an additional 10 days: *Provided, however,* That if termination proceedings are initiated, the summary suspension shall remain in full force and effect until all termination proceedings have been fully concluded.

(e) *Right to counsel; travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in an informal meeting pursuant to paragraphs (d) and (e) of this section do not have an attorney acting in that capacity as a regular member of the staff of the organization, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney. However, such fees shall not exceed $100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Government. Travel Regulations and 45 CFR 1069.3-1, 1069.3-6 (CSA Instruction 6910-1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in an informal meeting pursuant to paragraph (d) and (e) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in 45 CFR 1069.3-1 to 1069.3-6 (CSA Instruction 6910-1a).

§ 1050.115-8 CSA implementing policies and procedures governing termination of assistance.

(a) *Purpose and scope.* (1) This section establishes rules for the termination of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be terminated for failure to comply with the terms and conditions of its grant, including applicable Laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR Part 1010 (CSA Instruction 6004-01a) shall apply.

(3) Pursuant to section 604(3) of the Act and CSA Instruction 6800-13, the responsible CSA official may terminate a grant under the circumstances outlined in paragraph (a)(1) of this section.

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question.

(2) The term "party" means CSA, the grantee concerned, and any other agency or organization which, by right or by permission of the presiding officer, is a participant in a termination hearing.

(c) *Notice and pre-hearing procedures.* (1) If the responsible CSA official believes a grantee's violation of the terms and conditions of its grant is sufficiently serious to warrant termination, whether or not the grant has been suspended, he shall state that there appear to be grounds which warrant termination and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the grantee that the matter has been set down for hearing at a stated time and place, in accordance with paragraph (d) of this section. In the alternative the notice shall advise the grantee of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the grantee may request such a hearing. (If the grant is Regionally administered, the Regional Director of the grantee's Region may initiate the notice of intent to terminate on behalf of CSA. Any notice initiated by the Regional Director shall inform the grantee of the name and address of the responsible CSA official and shall direct the grantee to address all communications concerning the termination hearing to that official.)

(2) Termination hearings shall be conducted in accordance with the provisions of paragraphs (e) and (f) of this section. They shall be scheduled for the earliest practicable date, but not later than 30 days after a grantee has requested such a hearing. Consideration shall be given to a request by a grantee to advance or postpone the date of a hearing scheduled by CSA. Any such hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements specified in paragraph (a) of this section. In any termination hearing, CSA shall have the burden of justifying the proposed termination. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement specified in paragraph (a) of this section, the grantee shall have the burden of proving that such action was timely taken.

(3) If a grantee requests CSA to hold a hearing in accordance with paragraph (c)(1) of this section, it shall send a copy of its request for such a hearing to all delegate agencies which would be financially affected by termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. This material shall be sent to these delegate agencies at the same time the grantee's request is made to CSA. The grantee shall promptly send CSA a list of the delegate agencies to which it has sent such material and the date on which it was sent.

(4) If the responsible CSA official pursuant to paragraph (c)(1) of this section informs a grantee that a proposed termination action has been set for hearing, the grantee shall within 5 days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. The grantee shall send the responsible CSA official a list of all delegate agencies notified and the date of notification.

(5) If the responsible CSA official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with paragraph (e) of this section, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of CSA and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(6) The results of the proceeding and any measure taken thereafter by CSA pursuant to this section shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(7) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible CSA official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of CSA.

(8) The responsible CSA official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

(d) *Time and place of termination hearings.* The termination hearing shall be held in Washington, D.C., or in the appropriate Regional Office, at a time and place fixed by the responsible CSA official, unless he determines that the convenience of CSA or of the parties or their representatives requires that another place be selected.

(e) *Termination hearing procedures*—(1) *General.* The termination hearing, the decision on termination and any review thereof shall be conducted in accordance with paragraphs (e), (f), and (g) of this section.

(2) *Presiding officer.* (i) The presiding officer at the hearing shall be the responsible CSA official or, at the discretion of the responsible CSA official an independent hearing examiner designated as promptly as possible in accordance with section 3105 of Title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(ii) After the notice described in paragraph (e)(6) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of CSA or the appropriate Regional Counsel: *Provided,* That the attorney designated to assist him has not represented CSA or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(3) *Presentation of evidence.* Both CSA and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (e)(6) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(4) *Participation.* (i) In addition to CSA, the grantee, and any delegate agencies which have a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material. (ii) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments. (iii) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the grantee, and CSA, and, in the case of denial, a brief statement of the reasons therefor: *Provided however,* That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted. (iv) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(5) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(6) *Notice.* The responsible CSA official shall send the grantee and any other party a notice which states the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the CSA requirements which it is contended the grantee has violated. The notice shall be filed and served not later than 10 days prior to the hearing

and a copy thereof shall be filed with the presiding officer.

(7) *Notice of intention to appear.* The grantee and any other party which has a right or permission to participate in the hearing shall give written confirmation to CSA of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(8) *Form and date of service.* All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: Provided however, that the effective date of the notice that there appear grounds which warrant termination shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of CSA.

(9) *Prehearing conferences.* Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (e)(2)(ii) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(10) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this section but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(11) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(12) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of CSA. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(13) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of paragraph (f)(1) of this section.

(f) *Decisions, termination notices, and review by the director.* (1) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to paragraph (e)(13) of this section. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the grantee has failed to comply.

(2) The decision of the presiding officer may provide for continued suspension or termination of the grant in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(3) If the hearing is held by an independent hearing examiner rather than by the responsible CSA official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible CSA official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible CSA official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own decision thereon, including the reasons therefor. The decision of the responsible CSA official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(4) Whenever a hearing is waived, a decision shall be made by the responsible CSA official and a written copy of the final decision of the responsible CSA official shall be given to the grantee.

(5) The grantee may request the Director to review a final decision by the responsible CSA official which provides for termination. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Director or his designee shall consider the reasons stated by the grantee for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible CSA official or remand the matter to the responsible CSA official for further hearing or consideration. The decision of the responsible CSA official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his designee, the grant shall remain suspended under the terms and the conditions specified by the responsible CSA official, unless the responsible CSA official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the grantee's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

(g) *Right to counsel: Travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in a termination hearing pursuant to paragraph (c) of this section do not have an attorney acting in that capacity as a regular member of the staff of the organization, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and to transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Travel Regulation and in 45 CFR 1069.3-1 to 3-6 (CSA Instruction 6910-1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in a termination hearing pursuant to paragraph (e) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Regulations and in 45 CFR 1069.3-1 to 1069.3-6 (CSA Instruction 6910-1a).

(h) *Modification of procedures by consent.* The responsible CSA official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this section with the consent of the grantee and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant to paragraph (c)(5) of this section. Such consent must be in writing or be recorded in the hearing transcript.

(i) *Other remedies.* The procedures established by this section shall not preclude CSA from pursuing other remedies authorized by law.

(j) *Consequences of termination.* Upon termination, the disposition of unexpected Federal funds and of property purchased with program funds shall be according to the provisions of CSA Instruction 6800-12, Grant Closeout Procedures. Termination shall not affect expenditures or legally binding commitments made prior to the grantee's receipt of notice of the termination, provided such expenditures were made in good faith and are otherwise allowable. Funds shall not be considered to be legally committed solely by virtue of a grantee's contract or other commitment to a delegate agency.

Subpart N—Standard Form for Applying for Federal Assistance (SF 424) (CSA Instruction 6800-14)

§ 1050.120 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment M).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment M).

(3) CSA Instruction 6710-3a, Project Review and Notification System. (45 CFR 1067.10.)

(4) OEO Instruction 6710-1, Applying for a CAP Grant and Changes thereto.

(5) CSA Instruction 6710-6, Applying for a Grant Under Title VII of the Community Services Act. (45 CFR 1067.15.)

(6) CSA Instruction 6143-1a, Emergency Energy Conservation Program. (45 CFR 1061.30.)

(7) OEO Instruction 7570-1, Applying for a new Research or Demonstration Grant Under EOA.

(8) OEO Instruction 7570-2, Applying for Continuation of a Research or Demonstration Grant.

§ 1050.121 Standards.

(a) Standard Form 424 will be used by public agencies and private organizations as a face sheet for applications when applying for any CSA grant.

(b) The SF-424 will be used to fulfill the requirements of OMB Circular A-95 for a notification of intent from applicant to clearinghouse(s) that assistance will be applied for from CSA in those instances where clearinghouses do not require other forms.

(c) The SF 424 will also be used by CSA funding offices to report to the clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95, and to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082.

§ 1050.122 CSA implementing policies and procedures.

(a) Detailed CSA policies regarding the uses of the SF 424, including information on completing the form, will be found in reference (3).

(b) Detailed policies and procedures for applying for grants under the Economic Opportunity Act will be found in references (4) through (8).

Subpart O—Property Management Standards

SOURCE: 45 FR 8299, Feb. 7, 1980, unless otherwise noted.

§ 1050.130-1 Applicability.

This subpart applies to all grants, delegate agency agreements, and other agreements to public and private organizations/agencies under the Economic Opportunity Act of 1964, as amended, when such assistance is administered by the Community Services Administration.

§ 1050.130-2 References.

(a) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(b) OMB Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

(c) Pub. L. 94-519, Disposal of Excess and Surplus Federal Property, 90 Stat. 2456, 40 U.S.C. 483c.

(d) 45 CFR 1067.5, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII.

§ 1050.130-3 Purpose.

This subpart sets forth the standards governing management of property acquired with funds awarded by the Community Services Administration or cost of which was charged to a project supported by CSA grant or other agreement. The grantee may use its own property management standard procedures provided it observes the provisions of this subpart.

§ 1050.130-4 Definitions.

(a) *Real property.* Real property means land, including land and improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(b) *Personal property.* Personal property means any kind except real property. It may be tangible-having physical existence, or intangible having no physical existence, such as patents, inventions and copyrights.

(c) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that grantees subject to Cost Accounting Standards Board regulations may use the CASB standard or $500 per unit and useful life of two years. A grantee may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.

(d) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

(e) *Excess property.* Excess property means property under the control of any Federal agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(f) *Acquisition cost of purchased nonexpendable personal property.* Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included unless it is contrary to the grantee's established accounting practices.

(g) *Exempt property.* Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the grantee without further obligation to the Federal Government except as provided in § 1050.130-8a. Such unconditional vesting of title will be pursuant to any Federal legislation that provides the Community Services Administration with adequate authority.

§ 1050.130-5 Standard—real property.

(a) Title to real property shall vest in the grantee subject to the condition that the grantee shall use the real property for the authorized purpose of the project as long as it is required.

(b) The grantee shall obtain approval by the Community Services Administration for the use of real property in other projects when the grantee determines that the property is no longer required for the purpose of the original grant. Use in other projects shall be limited to those under other federally sponsored projects (i.e., grants or other agreements) or programs that have purposes consistent with those authorized for support by the Community Services Administration.

(c) When the real property is no longer needed as provided in § 1050.130-5 (a) and (b) the grantee shall request disposition instructions from the appropriate administering office of the Community Services Administration. CSA shall apply the following rules in its disposition instructions:

(1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of property.

(2) The grantee may be directed to sell the property under guidelines provided by the Community Services Administration and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds).

(3) When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competiton to the extent practicable and result in the highest possible return.

(4) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program, or project to the current fair market value of the property.

§ 1050.130-6 Standard—federally owned nonexpendable personal property.

(a) Title to federally-owned personal property remains vested in the Federal Government. Grantees shall submit an annual inventory listing of federally-owned property in their custody to the appropriate CSA Property Administrator. When the grant is completed, or when the property is no longer required, the grantee shall report the property to the appropriate CSA Property Administrator for further utilization or disposition.

(b) If CSA has no further need for the property it shall be declared excess and reported to the General Services Administration. Disposition instructions will be issued to the grantee after review by the appropriate CSA Property Administrator.

§ 1050.130-7 Standard—exempt property.

(a) When statutory authority exists, (e.g. Pub. L. 95-224, 41 U.S.C. 506b) title to nonexpendable personal property acquired with project funds, shall be vested in the grantee upon acquisition unless it is determined that to do so is not in compliance with the objectives of the Community Services Administration.

(b) When title is vested in the grantee, the grantee shall have no other obligation or accountability to the Federal Government for its use or disposition. The provisions of § 1050.130-8(a)(1) apply.

[45 FR 53155, Aug. 11, 1980]

§ 1050.130-8 Standard—other nonexpendable property.

(a) When other nonexpendable tangible personal property is acquired by a grantee with project funds, title shall not be taken by the Federal Government but shall vest in the grantee, subject to the following conditions:

(1) *Right to transfer title:* For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, CSA reserves the right to transfer the title to the Federal Government or a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following conditions:

(i) The property shall be appropriately identified in the grant or other agreement or otherwise made known to the grantee in writing.

(ii) The appropriate CSA Property Administrator shall issue disposition instructions to grantees within 120 calendar days after the end of the grant for which it was acquired. If disposition instructions are not issued within the 120 calendar day period, the grantee shall apply the standards of § 1050.130-8 (b) and (c) as appropriate.

(iii) When CSA exercises its right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in § 1050.130–6.

(iv) When title is transferred either to the Community Services Administration or to a third party, the provisions of § 1050.130–8(c)(2)(B) of this part should be followed.

(b) *Use of other tangible nonexpendable property for which the Grantee has title.* (1) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities in the following priority:

(i) Activities sponsored by the Community Services Administration.

(ii) Activities sponsored by other Federal Agencies.

(2) *Shared use.* During the time that nonexempt nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired.

(i) First preference for such other use shall be given to other projects or programs sponsored by the Community Services Administration.

(ii) Second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Community Services Administration. User charges should be considered if appropriate.

(c) *Disposition of other nonexpendable property.* When a grantee no longer needs the property as provided in § 1060.130–8(b), the property may be used for other activities in accordance with the following conditions:

(1) *Nonexpendable property with a unit acquisition cost of less than $1,000.00.* The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) *Nonexpendable personal property with a unit acquisition cost of $1,000.00 or more.* (i) The grantee may retain the property for other uses provided that compensation is made to the Community Services Administration. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the appropriate CSA Property Administrator.

(ii) The Community Services Administration shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within the agency, the availability of the property shall be reported to the General Services Administration by CSA to determine whether a requirement for the property exists in other Federal agencies. The Community Services Administration shall issue instructions to the grantee no later than 120 days after the grantee's request. The following procedures shall govern disposition under this paragraph (c)(2)(ii) and the preceding paragraph (c)(2)(i):

(A) If instructed, or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Community Services Administration in an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. The grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater for the grantee's selling and handling expenses.

(B) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the Federal agency which receives the property an amount which is computed by applying the percentage of the grantee's participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(C) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Community Services Administration for such costs incurred in its disposition.

(d) *Property management standards for nonexpendable property.* The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the property, including grant or other agreement number.

(iv) Whether title vests in the grantee or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage of CSA participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates CSA for its share.

(2) Property owned by CSA must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the appropriate CSA Property Administrator.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

[45 FR 8299, Feb. 7, 1980; 45 FR 25064, Apr. 14, 1980; 45 FR 53156, Aug. 11, 1980]

§ 1050.130-9 Standard—expendable personal property.

Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000.00 in total aggregate fair market value, upon termination or completion of the grant other agreement, and the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use in nonfederally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

§ 1050.130-10 Standard—intangible property.

(a) *Inventions and patents.* If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to CSA. Unless there is a prior agreement between the grantee and CSA on disposition of such items, CSA shall determine whether protection on the invention or discovery shall be sought. CSA will also determine how the rights in the invention or discovery including rights under any patent in the invention or discovery including right or issued thereon—shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (The President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

(b) *Copyrights.* Except as otherwise provided in the terms and conditions of the agreement, the author or the grantee is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but CSA shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

§ 1050.130–11 Property acquisition.

(a) *Acquisition policy and authorization*—(1) *Excess Government Property.* (i) 40 U.S.C. 483c provides that grantees may be authorized to acquire excess government property provided, that an amount equal to twenty-five percent of the original cost of the excess property be paid to the U. S. Treasury by CSA.

(ii) In order to acquire excess property the grantee must pay, by certified check or money order, an amount equal to twenty-five percent of the acquisition cost of the items received, made payable to the Community Services Administration. The check or money order must accompany the SF 122, Transfer Order Excess Personal Property.

(iii) The appropriate CSA Property Administrator must review and certify all Standard Form 122s and hold acquisition payment until property is received by the grantee. The grantee receiving property must notify the Property Administrator that the property has been received. The receipts and a signed copy of the SF 122 will then be transmitted to the Chief, Finance and Grants Management Division, Community Services Administration, 1200 19th Street, NW., Washington, DC 20506. The Finance and Grants Division will make payment to the Treasurer of the United States.

(iv) Title to excess property shall rest in the grantee.

(b) *Surplus Government Property.* 40 U.S.C. 484 also provides for donation of surplus property within the State.

(1) To any public agency for use in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety. As used in this subpart the term "public agency" means any state political subdivision thereof including any unit of local government or economic development district or any department, agency, instrumentality thereof, including instrumentalities created by compact or other agreement between states or political subdivisions or any Indian tribe, band, group pueblo, or community located on a State reservation. Also the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands, Guam and American Samoa, or

(2) To nonprofit education or public health, institutions or organizations, i.e., medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care center, radio and television stations, museums attended by the public, and libraries serving free all residents of a community district, state, or region which are exempt from taxation under section 501 of the Internal Revenue Code of 1964, for purposes of education or public health (including research for any such purpose).

(c) *Authorization*—(1) *GSA excess property.* (i) Upon funding of certain grants determined to be eligible for excess property, the appropriate CSA Property Administering office will issue the grantee a letter of authorization to obtain GSA excess property. A Screener's Identification Card, (GSA Form 2946) will also be issued to qualified non-Federal agency screeners grantee representatives to screen and select excess property. The Property Administrator will issue the Screener's Identification Card and will inform the screeners in its use. The Screening Card is valid only for the funding period of the grant and must be renewed if and whenever the grant is refunded.

(ii) A record of certified screeners must be maintained by the Property Administrator and the GSA Regional Office kept informed of the changes.

(iii) When the services of an approved non-Federal agency screener are discontinued, the Property Administrator will recover the GSA Form 2946 and forward it to the validating GSA Regional Office for cancellation.

(2) *Surplus property.* The grantee should contact the representative of the State Agency for surplus property in its state for eligibility application. The Property Administrator in the appropriate CSA administering office will assist. The State Agency for surplus property may assess a service charge for its assistance in acquiring surplus property. Grantees may use CSA grant funds to pay the service charge for surplus property only if it is for use in a CSA-funded program. Surplus property acquired through the state will be accounted for on the grantee's inventory records for CSA property.

(3) The appropriate CSA property Administrator will approve only those requests for excess government property (SF 122) which represents requirements for CSA-funded programs. Requests for property required in conjunction with other Federal or State agency programs will be returned without action.

[45 FR 8299, Feb. 7, 1980; 45 FR 25065, Apr. 14, 1980; 45 FR 53156, Aug. 11, 1980]

Subpart P—Procurement Standards

SOURCE: 45 FR 28137, Apr. 28, 1980, unless otherwise noted.

§ 1050.160–1 Applicability.

This subpart applies to all grants, delegate agency agreements, and other agreements to public and private organizations/agencies under Titles II, IV, and VII of the Economic Opportunity Act of 1964, as amended, when such assistance is administered by the Community Services Administration.

§ 1050.160–2 References.

(a) OMB Circular A–110, Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(b) Federal Management Circular 74–7 or OMB Circular A–102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments.

(c) 45 CFR Part 1050—Subpart 0, Property Management Standards (CSA Instruction 6800–15).

(d) Section 213 of the Economic Opportunity Act of 1964, as amended.

(e) Section 626 of the Economic Opportunity Act of 1964, as amended.

§ 1050.160–3 Definition.

Procuring Party. The procuring party as used in this subpart means the grantee or the delegate agency, whichever is making a procurement.

§ 1050.160–4 Purpose.

The purpose of this subpart is to provide standards for use by grantees and delegate agencies in establishing procedures for the procurement of supplies, equipment, construction and other services, including consultant services, with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders.

§ 1050.160–5 General responsibilities and procedures.

(a) A procuring party may use its own procurement procedures provided that the procurements for Federal Assistance Programs conform to the standards set forth in this regulation.

(b) These standards contained in this subpart do not relieve the procuring party of the contractual responsibilities arising under its contracts. The procuring party is the responsible authority, without recourse to CSA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant or other agreements. This includes disputes, claims, protests of award, source evaluation of other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) Section 626(a) of the Economic Opportunity Act as amended, states that, "Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any agency, receiving financial assistance under this Act embezzles, willfully misapplies, steals, or obtains by fraud any of the monies, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to this Act, shall be fined not more than $10,000 or imprisoned for not more than two years, or both; but if the amount so embezzled, misapplied, stolen or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year or both".

§ 1050.160–6 Standard—code of conduct.

(a) The procuring party shall maintain a code of conduct that shall govern the performance of its board members, employees, and agents engaged in awarding and administering contracts using Federal funds. The code shall provide for disciplinary actions to be applied for violations of the code.

(b) No employee, officer or agent of the procuring party shall participate in the selection or in the award or administration of a contract supported by CSA funds where to his knowledge he or his immediate family, partners, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment.

(1) The term "immediate family" includes husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law.

(2) The term "financial or other interest" includes but is not limited to:

(i) Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.

(ii) Any of the following interests in the business with which the procuring party is contracting: Ownership; partnership interest or other beneficial interest of five percent or more; ownership of five percent or more of the stock; employment in a managerial capacity; or membership on the board of directors or governing body.

(c) The board members, employees, or agents of the procuring party shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements.

§ 1050.160–7 Standard—open competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) The procuring party should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids and/or a request for proposals for a particular procurement by a nongovernmental procuring party should be excluded from competing for that procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated.

(1) Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the procuring party, price and other factors considered

(2) Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

Any and all bids/offers may be rejected when it is in the procuring party's interest to do so and, in the case of governmental procuring parties, such rejections are in accordance with government's applicable law, rules, or regulations.

§ 1050.160–8 Standard—procedures.

The procuring party shall establish written procurement procedures which provide for, at a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement. To foster greater economy and efficiency public grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(c) The following affirmative steps shall be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction, and services. These steps include:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps listed above.

(d) The procuring party shall take similar appropriate affirmative action in support of women's business enterprises.

(e) The procuring party is encouraged to procure goods and services from labor surplus areas.

(f) The type of procuring instruments used, e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the procuring party but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" and percentage of construction cost methods of contracting shall not be used.

(g) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(h) Any proposed sole source contract, or proposed contract where only one bid or proposal is received by a nongovernmental procuring party, shall be subject to prior approval by the appropriate CSA administering office if the aggregate expenditure for all items procured from the contractor will exceed $5,000 in a 12-month period. In addition, for any procurement contract in which payment will be made by the procuring party in whole or in part with Title II grant funds, if the proposed contractor does the major part of its business with the procuring party and/or if the proposed contractor is a firm established or controlled by a member or members of the procuring party's staff or board, CSA approval will be based on, but not be limited to, the following:

(1) Evidence that the proposed contractor is a non-profit corporation whose income and assets would, in event of failure of the procuring party, continue to be used to benefit low-income individuals;

(2) Evidence that the hiring and procurement policies of the proposed contractor include the same prohibitions against nepotism and conflict of interest as those found in § 1050.160-6 of this subpart;

(3) Inclusion in the contract of a provision that the management, financial, and procurement records of the proposed contractor must be made available for inspection and examination to those parties and on the same basis as required for private nonprofit grantees in Subpart D of this part;

(4) Submission by the proposed contractor of an audited revenue and expenditures statement and balance sheet dated within the last twelve months; and

(5) Submission of supporting documentation that the prices being charged are competitive with prices being charged for similar items and/or services by other businesses.

(i) Any proposed sole source contract, or proposed contract where only one bid or proposal is received by a governmental procuring party shall be subject to prior approval by the CSA administering office if the procurement is expected to exceed $10,000. For governmental entities prior approval also is required if the procurement is expected to exceed $10,000 and specifies a brand name product or the procuring party's procedures or operation fails to comply with one or more significant aspects of this rule. If the latter situation exists the CSA administering office will notify the grantee in writing with a copy to the Office of Federal Procurement policy.

(j) The procuring party should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indices together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability. Costs or prices based on estimated costs for contracts shall be allowed only to the extent that cost incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(k) Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

(l) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

[45 FR 28137, Aug. 28, 1980, as amended at 45 FR 59153, Sept. 8, 1980]

§ 1050.160-9 Method of procurement for State and local governments.

Procurement under grants shall be made by one of the following methods: Small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; and/or noncompetitive negotiation.

(a) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $10,000. Grantees shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

(b) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(i) A complete, adequate and realistic specification or purchase description is available.

(ii) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(iii) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant, the following requirements shall apply.

(i) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define items or services needed in order for the bidders to properly respond to the invitation.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(v) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

(c) In competitive negotiation, proposals are requested from a number of sources and the request for proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposal shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The request for proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilized competitive negotiation procedures for procurement of Architectural/Engineering professional services, whereby competitor' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and resonable compensation.

(d) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is feasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After solicitation of a number of sources, competition is determined inadequate.

(e) Additional innovative procurement methods may be used by grantees with the approval of the appropriate CSA administering office.

§ 1050.160-10 Standard—contract provisions.

The requirements relate to provisions that must be included in contracts for procurements that are subject to this regulation. The term "contracts" in this section shall be construed as including subcontracts.

(a) *Administrative Remedies for Violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(b) *Termination Provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the procuring party, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) *Bonding Requirements.* In all contracts for construction or facility improvement awarded by a nongovernmental procuring part (A-110 only) for more than $100,000, the recipient shall observe the bonding requirements provided for in 45 CFR Part 1050, Subpart C.

(d) *Executive Order 11246.* All contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

(e) *Davis-Bacon Act.* All construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon acceptance of the wage determination. All suspected or reported violations shall be reported to CSA by the grantee.

(f) *Copeland Act.* All contracts or subcontracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. All suspected or reported violations shall be reported to CSA by the grantee.

(g) *Contract Work Hours and Safety Standards Act.* All contracts awarded by grantees and subgrantees in excess of $2,000 for *construction* contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard workweek of 40 hours. Work in excess of the standard work day or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(h) *Inventions and Patents.* Contracts or subcontracts which may give rise to inventions or patents shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by CSA and the grantee. The contractor shall be advised as to the source of additional information regarding these matters.

(i) *Access to Records.* All negotiated contracts (except those of $10,000 or less) awarded by a nongovernmental procuring party and all negotiated contracts (except those awarded by small purchases procedures) which are made by a public procuring party, shall include a provision to the effect that the procuring party, the Community Services Administration, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(j) *Clean Air Act.* Contracts and subcontracts of amounts in excess of $100,000 shall contain a provision that requires the procuring party to agree to comply with all applicable standards, order or regulations, issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Community Services Administration and the U.S. Environmental Protection Agency Assistant Administrator for Enforcement.

(k) *Energy Conservation Act.* Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-165).

PART 1060—GENERAL CHARACTERISTICS OF CSA-FUNDED PROGRAMS

Subpart 1060.1—Participation of the Poor in the Planning, Conduct, and Evaluation of Community Action Programs (CSA Instruction 6005-1)

Sec.
1060.1-1 Applicability of this subpart.
1060.1-2 Policy.
1060.1-3 Procedures.

Subpart 1060.2—CSA Income Poverty Guidelines (CSA Instruction 6004-1K)

1060.2-1 Applicability.
1060.2-2 Policy.

Subpart 1060.3—Limitation on Benefits to Those Voluntarily Poor (CSA Instruction 6004-2)

1060.3-1 Applicability of this subpart.
1060.3-2 Policy.

AUTHORITY: Secs. 211, 224, 602, 81 Stat. 693; 42 U.S.C. 2791.

SOURCE: 33 FR 17140, Nov. 19, 1968, unless otherwise noted.

Subpart 1060.1—Participation of the Poor in the Planning, Conduct, and Evaluation of Community Action Programs (CSA Instruction 6005-1)

§ 1060.1-1 Applicability of this subpart.

This subpart applies to all Community Action Agencies, Limited Purpose

Agencies, and State Economic Opportunity Offices assisted by OEO under Title II and III of the Economic Opportunity Act of 1964, as amended.

§ 1060.1-2 Policy.

(a) *General.* (1) An essential objective of community action is extensive and intensive participation by the poor and residents of poverty areas in the planning, conduct, and evaluation of programs which affect their lives.

(2) Without the steady growth of such participation in both quantity and quality, community action cannot succeed. The constituency of the Community Action Program and its grantees is poor people.

(3) The Community Action Program is based upon the recognition that poor people possess talents and resources essential to reducing the problems of poverty. They often have unique insight into their own problems and valuable knowledge about the effect on their own lives of the programs designed for their benefit. Their participation in the development of those programs is essential to building understanding and the will of the entire community to bring an end to poverty and to achieve effective communication between the poor and the nonpoor. Far more relevant, sensitive, and effective programs and plans will come out of their participation.

(4) In its provisions regarding participation by the poor, the Economic Opportunity Act as amended in 1967 clearly recognizes that successful community action must help enlist and assure effective use of these resources of the poor. It gives more specific form to the often expressed aim of community action to help the poor help themselves. Through the formation of their own organizations, they can effectively speak directly for their interests and views within their immediate areas and within the broader community and work together to solve their problems. The EOA authorizes assistance to those programs which will aid the poor to participate more fully in the affairs of their communities.

(5) OEO vigorously supports the emphasis of the Economic Opportunity Act on participation of the poor and requires meaningful participation in all programs funded with community action monies. It will offer this support through:

(i) The funding of grantees who are carrying out the purposes of this subpart and the provision of frequent review to see that direct involvement of poor people is maintained and increasing;

(ii) The requirement that all funding applications must explicitly indicate a course of action which will lead to improvement in the involvement of poor people in the community action agency (CAA) program;

(iii) Policy, guidance, training and technical assistance to help grantees to effectively involve poor people;

(iv) Direct efforts to encourage other agencies, organizations and groups at the national, state and local levels to adopt strong participation of the poor policies for programs affecting poor people.

(6) To encourage and support effective participation by the poor, in keeping with the CAP mission and objectives, OEO has established the following minimum requirements for community action grantees. These are minimum requirements. OEO will continue to do everything it can to assist grantees in their local efforts to exceed these basic requirements. The quality of participation, not the quantity, and continuing improvement are the common goals of OEO and its community action grantees. Mere gestures or empty ritual are no substitute.

(b) *Community action agencies*—(1) *Basic responsibilities.* Every CAA has a fundamental responsibility to encourage, assist, and strengthen the ability of the poor in the areas served by the CAA to play major roles in the organization; program planning; goal setting; determination of priorities; decisions concerning budgeting and financial management; key decisions concerning hiring of personnel, selection criteria, personnel policies, the number and type of non-professional jobs, training, and career development programs; and evaluation of programs affecting their lives. Decisions affecting organization can include what policymaking boards and committees are established and what their roles are in respect to each other, to paid staff, and to any delegate agency staff and boards; which programs will be delegated; and which staff unit or other group will have administrative responsibility for which programs. The fundamental responsibility of the CAA includes:

(i) Seeking and bringing about ways to improve its own effectiveness as a channel through which the poor, local government and private groups can communicate, plan, and act together in partnership. In such a partnership the poor must have a strong voice or role, both directly and through representatives whom they have chosen.

(ii) Providing the representatives of the poor with the tools and the support (guidance, training, and staff assistance) which will permit them to participate meaningfully in the affairs of the CAA, and in all of its programs and delegate agencies.

(iii) Encouraging the development of effective local organizations established and controlled by residents of poverty neighborhoods or areas. Community action agencies are expected to provide training, technical assistance and staff resources to enable the poor to develop, administer, and participate effectively in local area programs and to enter into the broader community discussion of poverty problems and solutions.

(iv) Providing employment for poor persons in all phases of the community action program.

(v) Continually insuring that delegate agencies involve poor persons in the planning, conduct and evaluation of delegated programs.

(vi) Working for the acceptance by other public and private agencies and organizations serving the community of effective and growing involvement of the poor in the planning, conduct and evaluation of all activities which affect them and their inclusion in career jobs in the agencies.

(2) *Representation and involvement on CAA Boards.* (i) Every CAA has the obligation to assure that at least one-third of the membership of the CAA governing or administering board are representatives of the poor and residents of the areas to be served by the CAA chosen in a democratic way. (Community Action Memo 81,[1] contained in the booklet "Organizing Communities for Action," sets forth on pp. 12-13 the policy for implementing this legislative requirement. The requirement that CAAs shall establish procedures in their bylaws, under which community agencies and representative groups of the poor which feel themselves inadequately represented on the CAA Board may petition for adequate representation, is spelled out on pp. 14-15.)

(ii) In addition to the provision for public board meetings publicized and conducted in accordance with OEO Instruction 7042-1,[1] the CAA is responsible for setting up the following procedures to make certain the representatives of the poor on the board are able to participate meaningfully:

(*a*) The proportion of democratically selected representatives of the poor on any executive committee and on all policy making committees and other subcommittees of the CAA shall fairly reflect their proportion on the CAA Board itself;

(*b*) The time and place for any board, committee, advisory committee or neighborhood council meeting shall be so fixed as to insure that it will be possible and convenient for the representatives of the poor to attend;

(*c*) A quorum for any board or committee meeting shall be established and it shall be at least 50 percent of the membership of that board or committee;

(*d*) Proxy voting is prohibited;

(*e*) Advance notice of and the agenda (an outline of matters to be considered) for any board or committee meetings shall be provided individually to all members in writing 5 days before the meeting. In addition, notices should be given to the local public media and posted in all neighborhood or community centers along with the agenda;

(*f*) Written minutes which include a record of votes on all motions, shall be distributed to all board members before the next board meeting. In addition, statements or records of all actions taken at all board meetings (including the record of the vote of each member when a roll call vote has been taken) shall be made available to the public on request.

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[1] Not filed with the Office of the Federal Register.

(*g*) In communities which include a non-English-speaking population advance notice, agendas, and minutes of meetings will be provided to any non-English-speaking representatives of that population in their own language, and there must be an interpreter available to them during the meetings;

(*h*) Funds for transportation, baby sitting and other legitimate expenses, as well as an allowance, should be provided by the CAA to enable representatives of the poor to participate regularly in board, committee, advisory council, or neighborhood council meetings. Statements of the expenses allowed and how representatives will be repaid for what they have spent will be drawn up by the CAA and given to the members of all CAA boards and advisory councils. (More detailed provisions for these reimbursements is spelled out in CA Memo 29A[1] OEO Instruction 6803-1, "Allowances and Reimbursements for Members of Policy-Making Bodies" is being developed to replace CA Memo 29A.[1]);

(*i*) Representatives of the poor on CAA Boards must be given adequate information and training about board functions, duties, and responsibilities and the issues which will come before the board, to permit them to make the fullest possible contribution to the work of the board. In this connection, the by-laws of the CAA shall be distributed and fully explained to the representatives of the poor on the board;

(*j*) Adequate information about standards of program effectiveness established by OEO and by the CAA shall be delivered when available to the representatives of the poor to permit them to plan for and evaluate CAA programs and to set priorities for the use of funds and other resources. Evaluations of CAA programs and their operation shall consider the views of representatives of the poor on the CAA Board, as well as the views of program participants and area residents;

(*k*) Representatives of the poor on CAA Boards will participate in the development of all parts of the CAA grant application, including "CAA Plans and Priorities," the work program, and the prereview meetings with the OEO Regional Office Field Representative.

(3) *Project Advisory Committees and neighborhood or Target Area Councils.* (i) While OEO recognizes that unique conditions exist in different regions of the country and in rural and urban communities and that the means of participation of the poor may therefore legitimately differ, every CAA is nonetheless responsible for developing effective involvement of the poor in each major program and in each of its target areas. This involvement may be in the form of (*a*) a program advisory committee composed of at least 50 percent democratically selected representatives of the poor being served by an individual program area (as required in the national emphasis programs such as Head Start, Legal Services, etc.) or (*b*) a neighborhood or target area based organization (such as a neighborhood or community council) made up of neighborhood residents. If these program advisory committees and neighborhood councils wish, they may:

(ii) Advise the CAA in setting annual program priorities based upon the top needs of the neighborhood or target area;

(iii) Participate in the development of the pertinent parts of the Community Action Grant process;

(iv) More particularly, participate in the development of CAP Form 81, "Community Action Agency Plans and Priorities," (Applying for a CAP Grant-OEO Instruction 6710-1, pp. III 9–14)[1] and CAP Form 7, "Program Account Work Program," (pp. 13–25) bearing on the program operating in their neighborhood or in the program area for which the advisory committee or neighborhood council is responsible. Such a committee or council shall add a written approval or dissent from the CAA's Plans and Priorities, CAP Form 81, when it is submitted to OEO by the CAA;

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[1] Not filed with the Office of the Federal Register.

(v) Participate in the prereview meetings with the Regional Office Field Representative prior to the submission of the funding request.

(vi) Review and comment on existing or proposed CAA projects, policies, and plans and on major OEO policy instructions sent to the CAA for comment;

(vii) Receive from the CAA copies of OEO publications, instructions, program guidance and operating handbooks;

(viii) Participate in evaluations of programs operated or delegated by the CAA and present their findings to the CAA Board for its consideration;

(ix) Review and comment on CAA self-evaluation reports, OEO on-site evaluation reports, audits, and studies or evaluations contracted privately by the CAA. Privacy of personnel matters should be protected by pulling out sensitive references rather than withholding the whole document from distribution;

(x) Have an influential voice (though not necessarily the once voice) in the approval of program staff working in their geographical area (i.e., neighborhood center directors in the case of neighborhood councils) or in the program for which they have responsibility (i.e., a Head Start Director in the case of a parent advisory committee), and have an influential voice in the development of personnel policies and standards for selection of other staff personnel:

(xi) Work toward an effective role (*a*) in the planning, coordination, conduct and evaluation of all related poverty programs supported by Federal, State or local funds operating in their area, and (*b*) in assuring that existing and proposed services in the neighborhoods and target areas are responsive and relevant to community problems and are fully adapted to neighborhood needs and conditions.

(4) *Neighborhood or Target Area Organizations.* (i) To strengthen the voice of poor people in the decisions which affect them and to increase the participation of poor people in the community action process, each CAA is expected to recognize or help establish target area or neighborhood-based organizations and to negotiate with them regarding their role in CAA-sponsored programs. The CAA must provide adequate support, guidance, training, and technical assistance to such organizations to help them become effective spokesmen and to attract additional resources from public and private sources. This assistance may include the provision of funds to permit the neighborhood or target area organization to hire their own expert assistance directly (lawyers, program specialist, planners, or trainers). With such support they can take part in community decisions affecting them on a basis of equality with those who are not poor.

(ii) These neighborhood or target area organizations must be (*a*) kept informed of all actions of the CAA or its delegate agencies which affect the neighborhood, and (*b*) given sufficient advance notice of CAA or delegate agency board meetings and the issues to be discussed to permit neighborhood or target area residents to consider the choice and develop neighborhood proposals to present to the CAA.

(iii) In order to increase the capability of neighborhood or target area organizations, the CAA and neighborhood organizations should determine jointly the extent to which the neighborhood organizations will be delegated responsibility for the planning, funding, conduct or administration of program activities within the neighborhood or target area. Any such delegation should take account of the capability of the organization to perform the functions effectively.

(iv) Each CAA shall take every opportunity to assist the neighborhood or target area organizations in their efforts to improve existing service programs in the community and bring additional services within the reach of the poor. Whenever possible, the services can be made available through neighborhood or community centers planned and operated by neighborhood or target area boards or councils. The success of the CAA in this effort will be judged by the ability of neighborhood or target area groups to deal effectively with public and private agencies regarding the distribution and productive use of resources to meet the needs of area residents.

(v) A subcommittee on each CAA Board, including representatives of the poor, as well as qualified staff, should be assigned specific responsibilities to assure that the CAA is providing effective assistance and support to the development of neighborhood or target area organization capabilities.

(5) *Delegate agencies.* (i) When programs and funds are delegated by the CAA, the CAA shall require the same policies and procedures for participation of the poor as those established in this subpart for CAAs.

(ii) Delegate agencies established specifically to operate programs funded through the CAA (such as area or county policy boards or councils servicing an entire political subdivision) or whose primary responsibility is for programs sponsored by the CAA must have governing boards at least one-third of whose members are democratically selected representatives of the poor residing within that area. In the case of those area boards or council which cover less than an entire political subdivision, at least a majority of its members must be representatives of the poor residing within the area. Target area or neighborhood based organizations or corporations may have boards composed solely of the democratically selected representatives of area residents, but in those cases where major policy or funding responsibilities are delegated, provision must be made for representation of elected public officials.

(iii) Delegate agencies whose primary responsibilities are for programs not sponsored by the CAA (such as school boards) must establish an advisory board or committee to assist in the planning, conduct, and evaluation of its community action programs. At least a majority of the membership of such boards must be democratically selected representatives of the poor served by the delegated community action program.

(c) *Limited purpose agencies.* Limited purposes agencies shall have either a governing body made up of one-third representatives of the poor or a policy advisory committee composed of at least 50 percent democratically selected representatives of the poor being served by the OEO-funded program. Limited purpose agencies shall take the initiative in developing measures to implement the same requirements described in this subpart for every CAA for the participation of the poor in the planning, conduct, and evaluation of OEO-funded programs. The burden of proof shall be on the limited purpose agency to document in writing if it is legally unable to abide by the standards of this subpart.

(d) *State Economic Opportunity Offices.* (i) In addition to assisting in the implementation of the general policy statement of this subpart, the State Economic Opportunity Office (SEOO) shall promote the maximum feasible participation of poor people in the planning, conduct and evaluation of other state agency operations and programs which affect the poor. The SEOO shall encourage and work toward the development of career opportunities for the poor within other state agencies.

(ii) State Economic Opportunity Offices, whenever possible and consistent with State laws and regulations, shall employ poor people as staff or as consultants to help carry out training and technical assistance functions to community action programs.

(iii) Each SEOO which operates OEO-funded statewide poverty programs shall establish an advisory committee of representatives of the poor. When the SEOO submits an application for the funding of a statewide program, it shall have established an advisory committee which shall have participated in planning the programs. A representative elected by the representatives of the poor of each CAA Board in the state shall serve as a member of the SEOO Advisory Committee. These SEOO Advisory Committees shall:

(*a*) Meet not less than four times a year;

(*b*) Participate in the development of policies and procedures for the statewide programs; review and comment on the programs; participate in evaluations; and present their findings to the SEOO for its consideration;

(*c*) Recommend to the SEOO the advisability of operating new statewide programs.

(iv) Funds for transportation, babysitting, and per diem to enable these representatives of the poor to participate regularly in advisory committee meetings shall be provided by the SEOO from OEO funds.

(e) *Participation through employment.* (i) Every grantee, including SEOOs which operate OEO-funded statewide poverty programs, and delegate agency must develop and include in their personnel policies specific plans to fill staff positions to the greatest extent possible with individuals who are poor. Such policies must emphasize opportunities for training and career advancement and for employment of poor people in staff positions which are directly involved in the planning, budgeting, funding, conduct, administration and evaluation of the programs.

(ii) These policies must provide for (*a*) the development of job and staffing requirements (by analyzing jobs to determine if a professional is needed and by breaking down jobs in such a way to create "new careers") so as to maximize the number of nonprofessional positions; (*b*) the establishment of job qualifications based on the personal ability of an individual to perform, rather than on formal requirements of education and experience; (*c*) career development through increasing the amount of responsibility in the task performed so that poor persons employed by the CAA may have opportunities for advancement to the fullest extent of their abilities; and (*d*) continued on-the-job training and constructive supervision needed to permit advancement.

(iii) Every CAA further has the responsibility for developing career opportunities for the poor in other local agencies, both public and private.

(f) *Participation in evaluation.* Community Action Agencies, limited purpose agencies, and State Economic Opportunity Offices must obtain the views of program participants and area residents as well as the views of representatives of the poor on boards, committees and councils as part of their evaluation of grantee or delegate agency programs and operations.

§ 1060.1-3 Procedures.

(a) *Compliance*—(1) *Grantee and delegate agency report.* Each grantee and delegate agency has a responsibility to implement the policies and standards of this subpart. Implementation of this subpart should be clearly reflected in the agency's planning, program development, and budgeting processes and should be evaluated in writing by the agency every year. A report of progress should accompany the refunding request as a part of the agency's self-evaluation. Such a progress report will include:

(i) A summary of policies and procedures established to carry out this subpart;

(ii) A description of progress in improving the quality of participation.

(2) *Participation of the poor in compliance.* (i) In addition, every grantee and delegate agency's annual self evaluation shall include a section prepared by the representatives of the poor on the CAA, delegate agency or limited purpose agency Board, with the help of representatives of the poor on neighborhood, target area, or policy advisory boards, councils, and committees and of appropriate staff members. The representatives of the poor shall describe how the CAA, delegate agency, or limited purpose agency has:

(*a*) Provided opportunities for involvement of poor people in proposing, planning, approving, administering, operating and evaluating programs.

(*b*) Helped to develop the capacities of poor people to participate effectively. Special attention should be given to the amount of money and staff time devoted to training and technical assistance to increase and improve the involvement of poor people in the program.

(*c*) Responded to and supported the positions and requests of the poor and neighborhood groups regarding programs and issues which affect them.

(*d*) Promoted participation of the poor in the activities of other agencies and organizations in the community and in community-wide decision making.

(*e*) Development employment and career development opportunities for the poor.

(*f*) Worked toward increased control by the poor and target area residents over the economic life in their neighborhoods or areas.

(ii) This evaluation shall be given full consideration by the Board of the grantee and shall be submitted to the appropriate Regional Office of OEO with its CAP form 81. OEO will not approve an application for funding that does not explicitly indicate a course of action that will lead to improvement in the quality of involvement of poor people in its program.

(3) *State Economic Opportunity Office.* As part of its application for funding, each State Economic Opportunity Office shall submit to the appropriate regional office a written report which describes its implementation of this subpart.

(b) *Appeals.* (1) Petitions (signed by from 50 to 100 persons from community agencies or representatives groups of the poor, depending on the procedures established in the grantee's bylaws) claiming (i) inadequate representation on grantee boards, (ii) inability to influence the character of programs, or (iii) grantee refusal to fund programs proposed by the poor, may be presented to the governing boards of grantee organizations.

(2) Such appeals must be considered by the governing body of the grantee organization at a public meeting publicized, conducted and recorded in accordance with OEO/CAP policies regarding public hearings. (Interim regulations covered in CA Memo 32[1] are being revised in OEO Instruction 7042-1 which will soon be distributed.)

(3) Notification of receipt of such petition must be sent within 5 days to the OEO Regional Office or Headquarters Office which is responsible for funding and monitoring the grantee. This should be followed by a statement of the action of the governing body on the petition and the reasons supporting the action.

(4) In addition to the above procedures, poor people, either as individuals or groups, are encouraged to continue to express themselves directly to OEO Regional Offices and Headquarters if they have complaints about the operation of OEO-funded programs.

Subpart 1060.2—CSA Income Poverty Guidelines (CSA Instruction 6004-1K)

§ 1060.2-1 Applicability.

This subpart applies to all grants financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942)

[46 FR 15271, Mar. 5, 1981]

§ 1060.2-2 Policy.

(a) The attached income guidelines are to be used for all those CSA funded programs, whether administered by a grantee or delegate agency, which use CSA poverty income guidelines as admission standards. Any individual or family certified eligible for AFDC or SSI payments is automatically eligible for CSA program services without the need to be separately certified through the application of the attached income guidelines.

These guidelines do not supersede alternative standards of eligibility approved by CSA.

(b) The guidelines are also to be used in certain other instances where required by CSA as a definition of poverty, e.g., for purposes of data collection and for defining eligibility for allowances and reimbursements to board members. Agencies may wish to use these guidelines for other administrative and statistical purposes as appropriate.

(c) The attached guidelines are based upon Table 17 of the U.S. Bureau of the Census, *Current Population Reports,* Series P-60, No. 125, "Money Income and Poverty Status of Families and Persons in the United States: 1979" (Advance Report), U.S. Government Printing Office, Washington, D.C., October, 1980; and Department of Labor Press Release USDL 81-55 of January, 1981.

(d) The following definitions, from *"Current Population Reports",* P-60, No. 91, Bureau of the Census, December 1973 have been adopted by CSA for use with the attached poverty guidelines.

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[1] Not filed with the Office of the Federal Register.

(1) *Income.* Refers to total cash receipts before taxes from all sources. These include money wages and salaries before any deductions, but not including food or rent in lieu of wages. These include receipts from self-employment or from own farm or business after deductions for business or farm expenses. They include regular payments from public assistance, social security, unemployment and workman's compensation, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility purposes, income does not refer to the following money receipts: any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury; also to be disregarded is non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing.

(2) *A farm residence.* Is defined as any dwelling on a place of 10 acres or more with $50 or more annual sales of farm products raised there; or any place less than 10 acres having product sales of $250 or more.

POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit	Nonfarm family	Farm family
1	$4,310	$3,680
2	5,690	4,850
3	7,070	6,020
4	8,450	7,190
5	9,830	8,360
6	11,210	9,530

For family units with more than 6 members, add $1,380 for each additional member in a nonfarm family, and $1,170 for each additional member in a farm family.

POVERTY GUIDELINES FOR ALASKA

Size of family unit	Nonfarm family	Farm family
1	$5,410	$4,610
2	7,130	6,070
3	8,850	7,530
4	10,570	8,990
5	12,290	10,450
6	14,010	11,910

For family units with more than 6 members, add $1,720 for each additional member in a nonfarm family, and $1,460 for each additional member in a farm family.

POVERTY GUIDELINES FOR HAWAII

Size of family unit	Nonfarm family	Farm family
1	$4,980	$4,250
2	6,560	5,590
3	8,140	6,930
4	9,720	8,270
5	11,300	9,610
6	12,880	10,950

For family units with more than 6 members, add $1,580 for each additional member in a nonfarm family, and $1,340 for each additional member in a farm family.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942)

[46 FR 15271, Mar. 5, 1981]

Subpart 1060.3—Limitation on Benefits to Those Voluntarily Poor (CSA Instruction 6004–2)

§ 1060.3–1 Applicability of this subpart.

This subpart applies to all agencies receiving funds under Titles I-D, II, and III-B of the Economic Opportunity Act for programs administered by OEO in which income criteria are used as admission standards (with the exception of Head Start and Upward Bound programs).

(Sec. 602, 78 Stat. 503; 42 U.S.C. 2942)

[34 FR 2419, Feb. 20, 1969]

§ 1060.3–2 Policy.

(a) Section 611 of the Economic Opportunity Act provides as follows:

> The Director shall take such action as may be necessary to assure that, in determining a person's eligibility for benefits under this Act on account of his poverty, such person will not be deemed to meet the poverty criteria if his lack of income results from his refusal, without good cause, to seek or accept employment commensurate with his health, age, education, and ability.

(b) Under section 611 of the Act, an individual should not be treated as meeting poverty criteria for project benefits if he is fully capable of supporting himself but deliberately chooses not to do so. For example, a person having the education and training to earn an income substantially above the poverty line should not be considered eligible under the poverty criteria if, without good cause, he chooses not to work. On the other hand, an individual should not be excluded from project benefits if his lack of motivation is the result of a background of poverty. Section 201 of the Economic Opportunity Act explicitly recognizes that one goal of community action is to strengthen motivation among low-income people.

(c) Determinations regarding an individual's eligibility for project benefits under this subpart should be made as part of the existing screening process for these programs. Special screening procedures should not be created. In making determinations, grantee and delegate agencies must be sure that a needy person is not disqualified because of failure to seek or accept employment in situations where:

(1) Age or ill health, mental or physical, interferes with his ability to accept employment.

(2) Family obligations, especially the care of small children, interfere with his ability to accept employment.

(3) Transportation is not available to the job in question, or travel time or cost to and from work is unreasonable.

(4) Acceptance of the employment in question would subject him to the work situation to discrimination on account of race, color, creed, sex, or national origin.

(5) The employment which was available would not have given him an income above the poverty line. Since he would, in any event, remain in the target population, he should be considered eligible for antipoverty programs. Appropriate consideration should be given to such factors as the regularity of intermittence of the employment over time, and to seasonal patterns in employment, in determining whether the job would result in a family income above the poverty line.

(6) The length of the work week or other conditions or employment are unreasonable.

(Sec. 602, 78 Stat. 503; 42 U.S.C. 2942)

[34 FR 2419, Feb 20, 1969]

PART 1061—CHARACTER AND SCOPE OF SPECIFIC PROGRAMS

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1061.90-3 Timeframe for implementation of rule.
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AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

Subpart 1061.4—New Statement of CSA Policy on Family Planning (CSA Instruction 6130-01 and 6130-1)

SOURCE: 44 FR 56549, Oct. 1, 1979, unless otherwise noted.

§ 1061.4-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1061.4-2 Effective date.

February 3, 1967 (CSA Instruction 6130-01); May 18, 1971 (CSA Instruction 6130-1)

§ 1061.4-3 Purpose.

A 1966 amendment to the Economic Opportunity Act establishes new standards and requirements with regard to family planning services financed by CSA under Title II. It contains a new statement of policy on applications for CSA funds to provide family planning services and a revised set of "Special Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities".

§ 1061.4-4 Role of family planning in community action.

(a) Family planning information and assistance has been found by many communities to be a highly effective element in their community action programs. Through family planning projects conducted by CAA(s) and delegate agencies, low-income families have been provided with opportunities to gain information and assistance of direct interest and use to them.

(b) A general statement on family planning as an important element of community action can be found in an CSA Program Pamphlet entitled "Family Planning" copies of which can be obtained from any CSA Regional Office or by writing to Community Action Program, CSA, Washington, DC 20506. The pamphlet describes different ways in which family planning activities can be conducted in conjunction with community action programs.

§ 1061.4-5 Policy on family planning applications.

Family planning services, including contraceptive devices and drugs, may be made available to those individuals who meet eligibility criteria as set by the applicant agency, subject only to the limitations set forth in § 1061.4-6. Certain other limitations on costs to be paid for with Federal grants funds or local matching contributions remain in effect and are spelled out in the revised special conditions applicable to all CSA-assisted family planning activities. (Appendix A, Exhibit III, of this subpart). These include prohibitions on the use of project funds for promotion of those activities through mass media and a limitation of $20 per patient per year on the expenditure of project funds for contraceptive devices or drugs.

§ 1061.4-6 Requirements.

(a) The requirements set forth below must be met by any applicant for CSA assistance to family planning services financed under section 222(a).

(b) Criteria for Eligibility of a low-income individual for any family planning service shall be established by the applicant agency. If the program is operated by a delegate agency, rather than directly by the applicant, the delegate agency must also indicate its concurrence with the criteria. Any low-income person who meets these criteria shall be considered eligible for such assistance.

(c) Eligibility criteria established in accordance with the paragraph (b) of this section shall in all cases comply with the following limitations:

(1) *Income criteria.* All persons receiving CSA assisted family planning services must meet the test of need by reason of circumstances of poverty. Where a family planning program serves an area or neighborhood in which poverty is concentrated, all residents of the "target area" will normally be considered to meet this test. In other cases, the current CSA Income Poverty Guidelines will apply (See Subpart 1060.2 of this chapter).

(2) *Other eligibility criteria.* Local agencies operating family planning programs may not discriminate against any potential beneficiary on the grounds of race, sex, color, national origin, or religion. They may, however, establish other criteria for eligibility for information, medical assistance, and supplies. Applicants must provide, at the time of application, information on the eligibility criteria they will use. Appendix A, Exhibit I to this subpart is a sample format for use in providing this information.

§ 1061.4-7 Required assurance.

(a) Any applicant for funds to conduct a family planning project, or a project that includes family planning services, must provide assurance to CSA that it will establish and follow procedures designed to insure that:

(1) No individual will be provided with any information, medical supervision, or supplies which such individual states to be inconsistent with his or her moral, philosophical, or religious beliefs;

(2) No individual will be provided with any medical supervision or supplies unless such individual has voluntarily requested such medical supervision or supplies; and

(3) The use of family planning services financed by a CSA grant shall not be a prerequisite to the receipt of services from or participation in any other program financed under the Economic Opportunity Act.

(b) To provide these assurances the local agency requesting funds for such a project shall submit to CSA, at the time of application, a "Statement of Assurance on Family Planning Activities" signed by the grantee and any delegate agency that will actually carry out the project. (See Appendix A to this subpart, Exhibit II for a copy of the Assurance Form.)

§ 1061.4-8 Revised grant condition.

As a result of the amendment to Section 222(a), CSA has revised the "Special Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities." The new special conditions are included as Exhibit III of Appendix A to this subpart. They supersede all earlier special conditions on family planning activities and will apply to all projects to be approved in the future.

§ 1061.4-9 Effect on previously approved grants.

(a) The policies established in this subpart, in response to the amendment to Section 222(a), also apply to previously approved grants for family planning programs, or family planning elements of health programs.

(b) *Action to be taken.* Each grantee now operating a family planning component, or a component involving family planning information or services, must submit the following material to the appropriate CSA Regional Office no later than February 28, 1967. Failure to submit the required material by that date may result in suspension or termination of any CSA-assisted family planning activities.

(1) A statement describing the criteria to be used in determining eligibility of low-income individuals for family planning services. The statement must be signed by the chair of the governing body, or other appropriate official, of both the grantee and any delegate agency actually conducting the project involving family planning. A sample format for such a statement is included as Appendix A, Exhibit I to this subpart.

(2) A "Statement of Assurance" (See Appendix A, Exhibit II to this subpart) signed by the chair of the governing body, or other appropriate official, of both the grantee and any delegate agency actually conducting the project involving family planning.

(c) *Revised grant conditions apply.* The latest version of the "Special Conditions" now applies to such projects. (See Appendix A, Exhibit III to this subpart.)

APPENDIX A TO SUBPART 1061.4—NEW STATEMENT ON CSA POLICY ON FAMILY PLANNING

Exhibit I—Sample Format for Information on Eligibility Criteria for Family Planning Services

(To be executed by both the applicant or grantee and any delegate agency)

1. Income Eligibility Criteria

a. *Programs serving area or neighborhoods where poverty is concentrated.*

Will any income criteria be used other than residence in such area?

If so, specify.

b. *Programs serving other areas.* Will any income criteria other than the CSA "poverty line index" be used?

If so, specify.

2. Other Eligibility Criteria

Will any other eligibility criteria be used?

If so, specify.

3. Signature of Appropriate Officials

The undersigned hereby declare that this is a true and complete statement of eligibility criteria to be used in the following family planning program or other program involving family planning activities.

a. *Identification of Component and Name of Applicant* (*or Grantee*)

b. *Signature of Chair of Grantee* (*or Applicant*) *Governing Body*

Name of Applicant (or Grantee) Agency:
Name of Official:
Title:
Signature:
Date:

c. *Signature of Chair of Delegate Agency Governing Body*

This must be completed only if a delegate agency will conduct the family planning activities; if more than one delegate agency will participate, all must be listed.

Name of Delegate Agency:
Name of Official:
Title:
Signature:
Date:

Exhibit II—Sample Format for Assurance of Compliance With Section 244(4) of the Economic Opportunity Act in Family Planning Projects

(To be executed by both the applicant or grantee and any delegate agency)

________ (hereinafter called the Applicant).

(Name of Applicant or Delegate Agency)

AGREES THAT it will establish and follow the procedures listed below in order to comply with the requirements of Section 224(4) of the Economic Opportunity Act of 1964, as amended.

1. The Applicant will insure that a copy of the statement set out below is posted conspicuously in a place where prospective clients will have an opportunity to see and read it. The statement will be printed in large type and will also be printed in languages other than English if a considerable number of prospective clients are fluent in only those languages.

Prior to the initial provision of any course of instruction, medical supervision, or supplies relating to family planning to any individual, a program staff member will bring the printed statement to the individual's attention and, if the individual is unable to understand its meaning, will accurately convey the substance of the statement to such individual.

"Statement on Family Planning Activities Assisted by the Community Services Administration".

"A. Anyone who takes part in this family planning program must do so of his/her own free will.

"B. You may not receive any medical assistance or supplies for family planning purposes unless you ask for them of your own free will.

"C. If you object to any particular form or method of family planning for any reason at all, including religious reasons, please say so. If you say so, you will not get information, assistance, or supplies that relate to that form or method of family planning.

"D. No one is allowed to force you in any way to participate in a family planning program. No one can tell you 'Unless you take part in the family planning program, you won't be allowed to receive welfare, or get job training, or put your child in the Head Start class.'

"E. If you have any questions about what this statement means please ask the officials or doctors who are operating the program. They will be pleased to explain.

"F. If you believe that any of the rules given above have been violated, please tell the officials or doctors who are operating the program at once. Or you may write or call the Community Services Administration, Washington, DC 20506 or the nearest CSA Regional Office."

2. THE APPLICANT further agrees to comply with the "Special Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities (November, 1966").

3. THIS ASSURANCE is given in consideration of and for the purpose of obtaining either directly or indirectly any and all Federal grants, loans, contracts, property, or discounts, or other Federal financial assistance extended after the date hereof to the Applicant by the Community Services Administration, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek administrative or other remedies in the event of non-compliance with this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignee, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date ________.

(Name of Applicant or Delegate Agency)

By ________

(President, Chair of Board or comparable authorized official)

____

____

(Mailing Address)

Exhibit III—Special Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities (Nov. 1966)

1. Participation in the family planning component of this program must be entirely voluntary. No coercion or compulsion shall be employed to induce persons to use the family planning services funded by this CSA grant. No individual shall be provided with any medical supervision or supplies unless he or she has voluntarily requested such medical supervision or supplies.

2. Subject to the limitations set forth in these conditions, the project must provide and make known to each participant the availability of advice and assistance on a variety of family planning methods and techniques sufficient to insure that any person may obtain benefits from the program which are consistent with his or her personal beliefs and needs. No individual shall be provided with any information, medical supervision, or supplies which such individual states to be inconsistent with his or her moral, philosophical, or religious beliefs.

3. Use of the family planning services cannot be a prerequisite to receipt of services from or participation in any other program or activity whether or not funded by this grant.

4. The program must be under medical supervision sufficient to ensure that all practices conform to accepted medical standards.

5. Materials used in connection with this project shall not contain propaganda promoting a particular philosophy, technique or method of family planning, nor shall the administrators of this project declare any such preference in their relations with the participant in the program.

6. Project funds shall not be used to announce or promote through mass media the availability of the family planning program funded by this grant action.

7. No project funds shall be expended for any surgical procedures intended to cause abortions.

8. No project funds shall be spent for contraceptives, contraceptive devices, or drugs in an amount greater than twenty dollars ($20) per patient per year.

9. Project funds shall be exclusively for providing assistance to low-income persons, or to residents of the area served by the community action program. If the project is being carried out in connection with similar programs for other income groups, records shall be maintained which are adequate to demonstrate that this requirement has been satisfied.

10. The project must not be in conflict with state and local law.

Subpart 1061.20—Summer Youth Recreation Program (CSA Instruction 6168-2b)

SOURCE: 44 FR 31000, May 29, 1979, unless otherwise noted.

§ 1061.20-1 Applicability.

This subpart applies to grantees funded under section 222(a)(6) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1061.20-2 Definitions.

For purposes of this subpart the following definitions will apply:

(a) "Act" shall mean the Economic Opportunity Act of 1964, as amended.

(b) "Allocation" shall mean the distribution of funds among Community Action Agencies, and, where applicable, other public or private non-profit agencies.

(c) "Certification" shall mean a legally binding statement that certain requirements have been fulfilled.

(d) "CETA Act" shall mean the Comprehensive Employment and Training Act of 1978 (Public Law 95-524).

(e) "Chief Elected Official" and "Chief Executive Officer" shall include their designees.

(f) "Community Action Agency" shall mean a political jurisdiction, public agency, or private non-profit agency which has the power and authority and will perform the function set forth in section 212 of the Act and is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently recognized as a community action agency by the Director.

(g) "CSA Regional Director" shall mean the ten Regional Directors of the Community Services Administration in specified geographical areas of the country. (See Appendix A for the appropriate CSA Regional Office serving your area).

(h) "Director" shall mean the Director of the Community Services Administration.

(i) "Economically Disadvantaged" shall mean a person who is a member of a family as defined under CSA income poverty guidelines.

(j) "Summer Youth Program" shall mean the Summer Employment Program for Economically Disadvantaged Youth funded under Title IV section 481(a) of the Comprehensive Employment and Training Act of 1978 and administered by the U.S. Department of Labor.

§ 1061.20-3 Summer youth recreation program—description and components.

(a) *Description.* (1) The Summer Youth Recreation Program is designed to provide recreational opportunities for low-income children during the summer months. The programs will be conducted in conjunction with the Summer Youth Program administered by the U.S. Department of Labor. Summer Youth enrollees should be utilized to the maximum extent possible in the conduct of this program.

(2) The program shall begin as soon as possible after the spring closing of school and shall not continue beyond the end of the Federal fiscal year (September 30).

(3) To the maximum extent possible, Summer Youth Recreation Program sites shall be located directly in low-income communities or areas to ensure that disadvantaged youth are the beneficiaries of the programs. Activities shall be conducted in as many areas of the sponsor's jurisdiction and designed to serve as many low-income children as possible within the constraints of effective program management and support.

(b) *Components.* (1) Summer Youth Recreation Programs will consist of the following components:

(i) Recreation support programs will provide recreation opportunities such as playground activities, organized sports and games, arts and crafts, informational tours, cultural field trips, instruction in the creative arts and special events.

(ii) Transportation support programs will provide transportation services to such cultural, recreational, or educational activities.

§ 1061.20-4 Eligible sponsors/alternates.

(a) *Eligible Agencies.* Agencies eligible to receive summer recreation funds shall be Community Action Agencies or other public or private non-profit agencies where no Community Action Agency exists or has been designated to administer a program.

(b) *Alternative Sponsors.* The CSA Regional Director may provide for the funding of an alternative sponsor if a sponsor, for any reason, is unable to establish or maintain an acceptable Summer Youth Recreation Program.

(c) *Delegate Agencies/Subgrants.* A Summer Youth Recreation sponsor may enter into contracts or subgrants under the terms set forth in and through use of OEO Form 280, *Agreement for Delegation of Activities.*

§ 1061.20-5 Eligible participants.

Participants in a Summer Youth Recreation Program shall be economically disadvantaged youth too young to obtain employment.

The main target group for the Summer Youth Recreation Program shall be disadvantaged youth between the ages of eight and thirteen. In addition, to the extent possible all eligible grantees will provide access and services to the handicapped.

§ 1061.20-6 Funding.

(a) *Allocation of Funds.* The allocation formula for each eligible applicant shall be based upon section 225(b) of the Act. Each eligible applicant shall be allocated funds based upon the number of poor residing in that applicant's jurisdiction relative to the total number of poor residing in the United States. No eligible applicant is automatically entitled to receive its allotment. The allotments for applicants are target allotments to which they are entitled if applications of sufficient quality are submitted to justify funding. Target planning figures will be provided each Community Action Agency by the appropriate CSA Regional Office based upon the relative number of poor residing within that CAA's target area. CAAs will make applications for funding in the amount of that target planning figure in accordance with the application procedures established herein. Where funds permit, CSA Regional Directors shall have discretionary authority to provide funds to serve the recreational needs of economically disadvantaged children in areas not covered by a CAA where there is a clearly demonstrated need for such services and a viable delivery system exists through which to provide the services. Additional factors which will be taken into consideration in making funding decisions will be applicants ability to operate a high quality program based upon past overall grantee performance; evidence in the grant application of mobilization of non-CSA resources; coordination with other appropriate state and local organizations; and, the number of poor children proposed to be served.

(b) *Non-Federal Share; Waiver of.* Non-Federal share required by section 225(c) is waived for all programs funded under section 222(a)(6), Summer Youth Recreation Programs. Due to the depressed economic circumstances existing for State and local governments which has impacted particularly on local educational institutions, the most logical source for non-Federal share for this program, the Director has waived the requirement for this year. However, where possible, grantees are encouraged to seek non-Federal share and mobilize local resources. The waiver is automatic and does not require a request for waiver.

[45 FR 10795, Feb. 19, 1980]

§ 1061.20–7 Application process.

(a) *Forms/Documentation Required.* The basic forms to be used in applying for a Summer Youth Recreation Program are as follows: (1) CSA Form 301, Applicant Certification (new grantees only); (2) CAP Form 25, Program Account Budget; (3) CAP Form 25a, Program Account Budget Support Sheet; (4) CSA Form 419, Summary of Work Programs and Budget; (5) SF 424, Federal Assistance (Sections I and II completed).

(i) When Delegating Programs: (A) CAP Form 11, Assurance of Compliance with Civil Rights Act; (B) CAP Form 85, Administering Agency Funding Estimate; (C) CAP Form 87, Delegate Agency Basic Information; (D) OEO Form 280, Agreement for Delegation of Activities.

These forms will be made available to grantees by the appropriate CSA Regional Office.

(ii) All eligible applicants should submit the original and two (2) copies of all required forms and documents to the appropriate CSA Regional Director.

(b) *Deadline for Submission of Applications.* Summer Youth Recreation Program grant applications shall be submitted to CSA Regional Offices no later than 60 days following publication in the FEDERAL REGISTER.

(c) *Clearinghouse Notification and Review.* All eligible applicants are required to comply with the Project Notification and Review System procedures as outlined in 45 CFR 1067.10 (CSA Instruction 6710–3a). Applicants should submit their notifications of intent (NOIs) to the appropriate clearinghouses immediately following the publication of this FEDERAL REGISTER. Where requested by the Clearinghouses, applicants must submit their application to the Clearinghouses for review. Comments made by the Clearinghouses should accompany the application submitted to CSA together with evidence of consideration of those comments. Applicants may expedite the final release process by obtaining the appropriate Clearinghouse and Governor's approval in advance or in less time than required.

(d) *Delegation of Authority.* Regional Directors are hereby delegated the authority to sign Summer Youth Recreation Program grants.

(e) *Monitoring and Evaluation.* The CSA Regional Offices will be responsible for monitoring and evaluation of the Summer Youth Recreation Program. In addition, CSA Headquarters may undertake on-site evaluations of selected projects.

[45 FR 10795, Feb. 19, 1980]

§ 1061.20–8 Expenditure of funds.

(a) *Allowable Costs.* (1) Administration, includes salaries, wages and fringe benefits of administrative staff (but not program staff); consumable office supplies; rent, and utilities; tele-

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phone and postage; travel of administrative staff and audit costs. Funds in this category are subject to the administrative cost limitation of 15% as defined in OEO Instruction 6807-1, Limitation on CAA Administrative Costs.

(2) Recreation services including but not limited to: Purchase of recreation equipment[1] and supplies up to $200 per unit cost to be used in support of the program; rental of recreational equipment and supplies to be used in support of the program; admission to special events; field trip expenses; salaries; wages, fringe benefits, and orientation of program staff, such as, art instructors and playground supervisors; transportation for participants and program staff; lunches or food provided as an integral part of a recreation activity; recreation clothing and insurance. The standards to be used for the procurement of supplies, equipment, and other material and services with federal grant funds are described in CSA Instruction 7001-01a and OMB Circular A-102 (FMC 74-7).

(3) Charges above operating costs for the use of grantee owned facilities will not be made to the Summer Youth Recreation Program except with the written authorization of the appropriate CSA Regional Director.

(4) Transportation services, including but not limited to: bus tokens, and rental of buses and vans.

(b) *Non-Allowable Costs.* (1) Summer Youth Recreation Program funds shall not be expended on office equipment, in-place installations, capital improvements, to compensate participants in the program or to purchase transportation vehicles or equipment such as cars, vans, or buses.

(2) Summer Youth Recreation Program funds shall not be used to finance any other program activities and services not authorized under the Summer Youth Recreation Program such as, but not limited to, work experience, on-the-job training or public service employment activities.

(3) Summer Youth Recreation Program funds shall not be used to finance trips outside a 100-mile radius of the sponsor's jurisdiction unless the trip has received the specific written approval of the CSA Regional Director of his/her designee.

§ 1061.20–9 Coordination with other programs.

(a) The success of the Summer Youth Recreation Program depends to a great degree upon coordination with other programs and upon the mobilization of other public and private resources. A particularly key element in successful recreational programs is the utilization of the Summer Youth Program (summer employment for disadvantaged youth between the ages of 14 and 21). This program has been used since the inception of the Summer Youth Recreation Program to provide program personnel who serve as playground supervisors, coaches, field trip monitors, etc. in the Summer Youth Recreation Programs.

(b) All grantees should utilize the Summer Food Service Program for children as a part of the Summer Youth Recreation Program.

The Summer Food Service Program provides meals for low-income children from needy areas and is administered by the Department of Agriculture through state agencies or the Food and Nutrition Service Regional Offices (see Appendix B for listing of those organizations which can assist grantees in applying for the program). Organizations planning to apply for a Summer Youth Recreation Program grant should contact the appropriate state or regional officials as soon as possible to assure participation in the Summer Food Service Program for Children.

(c) The Summer Youth Recreation Program will be closely coordinated with related social service programs operated by other community based organizations (park and recreation departments, schools, etc.) with a view of minimizing possible duplication of effort and promoting efficiency by use of common facilities and services.

§ 1061.20–10 General requirements.

(a) *Maintenance of Effort.* No grantee shall, because of funds granted under Section 222(a)(6) of the Act, reduce or decrease funds already planned for summer youth recreation activities of a nature similar to those provided under the aforementioned section.

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[1] Disposition of property will be in accordance with the CSA policy published in CSA Instruction 7001-01a.

(b) *Insurance.* (1) *Public Grantees.* Public Grantees will follow their requirements and practices.

(2) *Nongovernmental Grantees.* General liability insurance, including automobile liability insurance must be obtained, in amounts which assure the adequate protection of program participants and the grantee. The required minimum property damage coverage shall be $25,000.

(c) *Bonding.* (1) Public grantees will follow their regular requirements and practices.

(2) Prior to the release of funds to any private grantee, CSA must receive written assurance that they are covered by or have made arrangements for appropriate bonding of grantee officials in accordance with provisions set forth in 45 CFR 1050.15 (CSA Instruction 6800-3).

(d) *Program Progress Report.* All grantees must submit a Program Progress Report (PPR) as outlined in 45 CFR § 1050.15 (CSA Instruction 6800-9) on the accomplishments of the Summer Youth Recreation Program to the appropriate CSA Regional Office. In the case of CAAs and grantees with other CSA funding, the Program Progress Report will be submitted during the report period following termination of the program. All other grantees must submit a final report within 90 calendar days following the termination date of the grant or 90 days after the program concludes.

(e) *Financial Reporting.* In the case of CAAs and grantees with other CSA funding, a financial report on the Summer Youth Recreation Program is to be submitted as part of the quarterly report which follows termination of the program to the appropriate CSA Regional Office in accordance with the requirements and procedures set forth in 45 CFR 1050.70 (CSA Instruction 6800-8). All other grantees must submit a final financial report within 90 days after the termination date on the grant or 90 days after the program concludes.

(f) *Auditing.* Audit requirements for this program are to be met by complying with CSA Instruction 6801-1 and any special conditions that are part of the grant award.

(g) *Safety and Health Conditions.* Participants shall not be exposed to conditions which are unsanitary or hazardous or dangerous to their safety or health.

(h) *Licensing.* All transportation services under this program will be from sources properly licensed to provide carriage of the public, and which are operated in compliance with all applicable local, state and/or federal statutes covering public transportation.

APPENDIX A TO SUBPART 1061.20—CSA REGIONAL OFFICES

Director, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Region I—States served: Connecticut, Maine, Massachusetts, New Hamphsire, Rhode Island, Vermont.

Director, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Region II—States served: New Jersey, New York, Puerto Rico, Virgin Islands.

Director, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104, Region III—States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Director, 101 Marietta Street, NW., Atlanta, Georgia 30323, Region IV—States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Director, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, Region V—States served: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Director, 1200 Main Street, Dallas, Texas 75202, Region VI—States served: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Director, 911 Walnut Street, Kansas City, Missouri 64106, Region VII—States served: Iowa, Kansas, Missouri, Nebraska.

Director, Federal Office Building, 1961 Stout Street, Denver, Colorado 80202, Region VIII—States served: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Director, 450 Golden Gate Avenue, P.O. Box 36008, San Francisco, California 94102, Region IX—States served: Arizona, California, Guam, Hawaii, Nevada, Pacific Trust Territories.

Director, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101, Region X—States served: Alaska, Idaho, Oregon, Washington.

APPENDIX B TO SUBPART 1061.20—STATE SCHOOL LUNCH DIRECTORS

1. Mr. T. G. Smith, Coordinator, Child Nutrition Program, State Department of Education, 410 State Office Building, Montgomery, AL 36130.
2. Mrs. E. Ruth Benigno, School Food Coordinator, State Department of Education, Pouch F, Juneau, AK 99801.
3. Mrs. Letea Tuaolo, Director, Food Services Program, Department of Education, Pago Pago, AS 96920.
4. Mrs. Junetta Barrett, Director, Food Nutrition Division, Department of Education, 1535 West Jefferson, Phoenix, AZ 85007.
5. Mr. Doyle Border, Coordinator, School Food Services, State Department of Education, 403 E Education Building, Little Rock, AR 72201.
6. Mrs. L. Gene White, Director, Office of Food and Nutrition Services, State Department of Education, 721 Capitol Mall, Sacramento, CA 95814.
7. Mr. Daniel G. Wisotzkey, Director, School Food and Services and Supportive Services, Colorado State Department of Education, 201 East Colfax, Room 318 State Office Building, Denver, CO 80203.
8. Mrs. Ann Tolman, Director, Child Nutrition Programs, State Department of Education, Post Office Box 2219, Room G-25, Hartford, CT 06115.
9. Mr. Robert L. John, State Supervisor of Food Services, Department of Public Instruction, John G. Townsend Building, Dover, DE 19901.
10. Mr. Joseph M. Stewart, Director, Department of Food Services, Public Schools of District of Columbia, 3535 V Street NE., Washington, DC 20018.
11. Mr. George A. Hockenberry, Administrator, Food and Nutrition Management, State Department of Education, Tallahassee, FL 32304.
12. Miss Josephine Martin, Administrator, School Food and Nutrition Section, State Department of Education, 156 Trinity Avenue South West, Atlanta, GA 30303.
13. Ms. Eleanor K. Smith, Associate Superintendent Food Services, Department of Education, Government of Guam, Post Office Box DE, Agana, GU 96910.
14. Mr. Stanley W. Doucette, Director, School Food Services, State Department of Education, Post Office Box 2360, Honolulu, HI 96804.
15. Mr. Cecil F. Olsen, Director, Food Services Branch, State Department of Education, Len B. Jordan Office Building, Room 213, Boise, ID 83720.
16. Mr. Robert E. Ohlzen, Manager, School Food Services Section, Illinois Office of Education, 100 North First Street, Springfield, IL 62777.
17. Mr. John J. Harter, Director, Division of School Food and Nutrition Programs, State Department of Public Instruction, 120 West Market Street, 16th Floor, Indianapolis, IN 46204.
18. Mr. Verne E. Carpenter, Director, Child Nutrition Programs Division, State Department of Public Instruction, Grimes State Office Building, Des Moines, IA 50319.
19. Mrs. Rita Hamman, Director, School Food Services, State Department of Education, Kansas State Education Building, 120 East 10th Street, Topeka, KS 66612.
20. Mr. Redwood Taylor, Director, Division of School Food Services, Bureau of Administration and Finance, State Department of Education, Capital Plaza, 19th Floor, Frankfort, KY 40601.
21. Dr. Joseph A. Dazzio, Director, Local School System Services, State Department of Education, Post Office Box 44064, Baton Rouge, LA 70804.
22. Miss M. Gertrude Griney, Director, School Nutrition Programs, State Department of Education, Education Building, Augusta, ME 04333.
23. Mrs. Joan H. Weatherholtz, Coordinator, Food and Nutrition Section, State Department of Education, BWI Airport, Post Office Box 8717, Baltimore, MD 21240.
24. Mr. John C. Stalker, Director, Bureau of Nutrition Education and School Food Services, State Department of Education, 182 Tremont Street, 10th Floor, Boston, MA 02111.
25. Mr. James L. Borough, Supervisor, Food and Nutrition Programs, School Management Services, State Department of Education, Post Office Box 30008, Lansing, MI 48909.
26. Mr. Charles L. Matthew, Director, Child Nutrition Section, State Department of Education, Capitol Square Building, Room 509, St. Paul, MN 55101.
27. Mr. John H. Walker, Assistant Director, Administration and Finance, State Department of Education, Room 604, Walter Sillers Office Building, Post Office Box 771, Jackson, MS 39205.
28. Mr. Wilbert Grannemann, Director, School Food Services, Department of Elementary and Secondary Education, Jefferson Building, Post Office Box 480, Jefferson City, MO 65101.
29. Mr. H. Brisbin Skiles, Supervisor, School Food Services, Office of Public Instruction, State Capitol, Helena, MT 59601.
30. Dr. Ray Steinert, Director, School Food Services, State Department of Education, 301 Centennial Mall South, 6th Floor, Lincoln, NE 68509.

31. Miss Eleanor Bateman, Supervisor of Food Services, State Department of Education, 400 West King Street Capitol Complex, Carson City, NV 89710.
32. Mr. Lloyd Littlefield, Director, Food and Nutrition, Division of Administration, State House Annex, Concord, NH 03301.
33. Mr. Walter F. Colender, Director, Bureau of Child Nutrition Programs, Division of Field Services, State Department Education, 225 West State Street, Trenton, NJ 08625.
34. Mr. Harry Riser, Director, School Food Services, State Department of Education, Santa Fe, NM 87503.
35. Mr. Richard O. Reed, Chief, Bureau of School Food Management, State Department of Education, 99 Washington Avenue—17th Floor, Room 1736, Albany, NY 12230.
36. Mr. Ralph W. Eaton, Director, State Department of Public Instruction, Post Office Box 12197, Raleigh, NC 27605.
37. Miss Roberta A. Bosch, Director, School Food Services, State Department of Public Instruction, State Capitol Building, Bismarck, ND 58505.
38. Mr. Robert H. Koon, Director, Division of School Lunch, State Department of Education, 65 South Front Street, Room 1009, Columbus, OH 43215.
39. Mr. Fred L. Jones, Director, School Lunch Section, State Department of Education, 2500 North Lincoln Boulevard, Oliver Hodge Memorial Education Building, Room 340, Oklahoma City, OK 73105.
40. Mr. Richard S. Miller, Coordinator, School Food and Nutrition Services, Oregon State Department of Education, 924 Lancaster Drive North East, Room 212, Salem, OR 97310.
41. Mr. Warren M. Vann, Jr., Chief, Division of Food and Nutrition Services, State Department of Education, Post Office Box 911, Harrisburg, PA 17126.
42. Mr. Carlos Martinez Aviles, Director, School Lunchroom Division, Department of Education, URB Industrial Tres Monjitas, Post Office Box 759, Hato Rey, PR 00919.
43. Mr. Robert F. Kaveny, Program Business Manager, Office of School Food Services, Roger Williams Building, Hayes Street, Providence, RI 02908.
44. Mr. John L. Seurynck, Director, Office of School Food Services, State Department of Education, 305 Rutledge Building, Columbia, SC 29201.
45. Mr. Gary Rhead, Administrator, School Food Services, Department of Education and Cultural Affairs, Division of Elementary and Secondary Education, Pierre, SD 57501.
46. Mrs. Mary Louise Richardson, Director, School Food Services, State Department of Education, Cordell Hull Building, Room 117, Nashville, TN 37219.
47. Mr. Charles A. Cole, Director, School Lunch Program, Texas Education Agency, 201 East 11th Street, Austin, TX 78701.
48. Mr. George A. Bussell, Food Service Officer, Department of Education, Trust Territory of the Pacific Islands, Saipan, Mariana Islands 96950.
49. Mr. Cluff D. Snow, Coordinator, School Food Services, 250 East 500 South, Salt Lake City, UT 84111.
50. Miss Banba Foley, Chief, Child Nutrition Programs, State Department of Education, State Office Building, Montpelier, VT 05602.
51. Vacant, Director, School Lunch Program, Department of Education, Post Office Box 630, Charlotte Amilie, St. Thomas, VI 00801.
52. Mr. John F. Miller, Supervisor, School Food Services, State Department of Education, 8th Street Office Building, Richmond, VA 23216.
53. Miss Virginia R. Whitlatch, Director, School Food Services, Department of Public Instruction, Old Capitol Building, Olympia, WA 98504.
54. Mrs. Faith Gravenmier, Director, Child Nutrition Programs, State Department of Education, State Capitol Building, Charleston, WV 25305.
55. Mr. Edward J. Post, Director, Bureau for School Food Services, Department of Public Instruction, 126 Langdon Street, Madison, WI 53703.
56. Mr. Robert M. Skyles, Assistant Superintendent of Administrative Services, State Department of Education, Hathaway Building, Cheyenne, WY 82002.

USDA REGIONAL OFFICES

57. Mid-Atlantic Regional Office, Food and Nutrition Service USDA, One Vahlsing Center, Robbinsville, NJ 08681: Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, Virgin Islands, Puerto Rico.
58. Midwest Regional Office, Food and Nutrition Service USDA, 536 South Clark Street, Chicago, IL 60606: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
59. Mountain Plains Regional Office, Food and Nutrition Service USDA, 1832 Stout Street, Room 296, Denver, CO 80202: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.
60. New England Regional Office, Food and Nutrition Service USDA, 34 Third Avenue, Burlington, MA 01803: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
61. Southeast Regional Office, Food and Nutrition Service USDA, 110 Spring Street, North West, Atlanta, GA 30309: Alabama, Florida, Georgia, Kentucky,

Mississippi, North Carolina, South Carolina, Tennessee.

62. Southwest Regional Office, Food and Nutrition Service USDA, 1100 Commerce Street, Dallas, TX 75202: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
63. Western Regional Office, Food and Nutrition Service USDA, 550 Kearny Street, San Francisco, CA 94108: Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Samoa America, Trust Territory, Washington.

Subpart 1061.30—Emergency Energy Conservation Program (CSA Instruction 6143-1a)

Source: 41 FR 29125, July 15, 1976, unless otherwise noted.

§ 1061.30-1 Applicability.

This subpart is applicable to grantees under section 222(a)(12) of the Community Services Act of 1974, if the assistance is administered by the Community Services Administration.

§ 1061.30-2 Definitions.

(a) *Program.* The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specified activities. Example: CSA's Emergency Energy Conservation Services Program.

(b) *Project.* The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program. Example: The Weatherization Project of the CAA in Philadelphia, Pa.

(c) *Local administering agency.* Any agency, organization or other group, whether grantee or delegate agency, which conducts or carries out project activities at the local community level.

§ 1061.30-3 Background.

On July 28, 1975 CSA published in the Federal Register (Federal Register, Vol. 40, No. 145) and issued CSA Instruction 6143-1. As a result of the publication and on the basis of actual field experience in the operation of projects, comments have been received which indicate a need for clarification of certain passages in the Instruction. The changes in this Instruction seek to achieve that clarification, and do not represent any major substantive changes in agency policy. The principal changes involve a designation of eligible activities using terminology that conforms with anticipated program account structures and avoids confusion with programs of other federal agencies; and amplification of agency policy on use of funds, including a more detailed definition of materials and a reference to the existing CSA Instruction on administrative costs; clarification of the relationship of Crisis Intervention programs to other community support networks; editorial revision of the section on Program Policy to reflect the issuance of CSA Guidance since publication of the original Instruction, including clarification of the role of the Project Advisory Committees in overseeing quality of planning, materials, and workmanship in Weatherization projects; and more precise instructions on the submission of data reporting forms.

§ 1061.30-4 Purpose.

The purpose of this Instruction is to inform grantees of the above changes and to publish those changes for their information.

§ 1061.30-5 Introduction.

Section 222(a) of the Community Services Act of 1974 includes a new subsection 12 that authorizes:

> A program to be known as Emergency Energy Conservation Services to enable low-income individuals and families, including the elderly and the near poor to participate in energy conservation programs designed to lessen the impact of the high cost of energy on such individuals and families and to reduce individual and family energy consumption.

This Instruction discusses the purpose of the program, conditions of the program, funding policies, activities eligible for funding, application submission offices and required application documents.

§ 1061.30-6 Purpose of the Special Emphasis Program.

The major assumption underlying this program is that the problems of the low-income created by the energy crisis have severely limited their ability to maintain minimum living conditions and in some cases, to survive. The major goal of the program is to enable low-income individuals and families, including the elderly and the near poor, to participate in energy conservation programs designed to lessen the impact of the high cost of energy on such individuals and families and to reduce individual and family energy consumption. A major component of the program is to support weatherization activities which will increase the thermal efficiency of the homes of the poor and the near poor. Another is to help assure participation of the poor and near poor in the decision making processes that will determine the pricing structures and availability of increasingly scarce energy resources. In addition there are or will be in many communities emergency situations calling for projects of crisis intervention to restore utility service or prevent cut-offs, provide emergency fuel deliveries or support other activities to assist those suffering serious hardship which endanger their health.

§ 1061.30-7 Eligible participants.

(a) Individuals, families, and elderly persons who are poor and near poor, are eligible to participate in programs funded under section 222(a)12 of the Act.

(b) For this program, the near poor are those persons in families or unrelated individuals whose incomes are between 100 percent and 125 percent of the poverty thresholds as set forth in CSA Instruction 6004-1i.

§ 1061.30-8 Eligible applicants.

CAAs, SEOOs, and non-profit CDCs and other public and/or private non-profit organizations and agencies that meet CSA eligibility criteria may apply.

§ 1061.30-9 Eligible activities.

(a) *Weatherization.* Making home repairs and energy saving improvements to minimize heat loss and improve thermal efficiency. Components include repairs to stop heat loss through infiltration; installation of a balanced combination of energy saving home improvements, including insulation and storm windows and doors; and where needed, the adjustment and repair of heating systems.

(b) *Crisis intervention.* Intervention to prevent hardship or danger to health due to utility shut-off or lack of fuel. Components include grants, loans, fuel voucher or stamp programs, or payment guarantees; mediation with utility companies or fuel suppliers and financial counseling; and maintenance of emergency fuel supplies, warm clothing, and blankets.

(c) *Consumer information, education, and legal assistance.* Dissemination of energy conservation information, conducting of energy conservation education programs and the representation of the interests of the poor in public proceedings involving, for example, energy policy and utility rate structures.

(d) *Transportation.* Projects designed to offset the increased costs to the poor of transportation needed for access to essential services and employment.

(e) *Alternate energy sources.* Development and application to energy needs of the poor of technology that capitalizes on non-fossil fuels and renewable energy sources such as solar and wind power or methane digesters; or that can make conventional fuels available to the poor at substantially decreased cost and/or increase efficiency.

(f) *Program support.* Training and technical assistance, research and demonstration, and evaluation.

§ 1061.30-10 Program policy.

CSA grantees are in a unique position to provide a comprehensive range of essential services to those individuals severely affected by the energy crisis. Grantees should develop balanced projects which are responsive to both short and long range needs of their constituents, and which will assure their full participation in the decision making processes which at every level of society will determine the policies which govern the management, pricing structures and availability of increasingly scarce energy resources. Finally, every effort must be made to integrate grantee energy projects with other projects which they operate, including housing, transportation, manpower training and development, nutrition, and economic development activities. In carrying out energy activities grantees shall take into account the special needs of the elderly, the handicapped, infants, and sick people.

(a) *Project Advisory Committees.* (1) Funded projects shall assure that each local administering agency shall have a Project Advisory Committee, made up of at least 51 percent poor persons and including representatives of the local governments and other resource agencies within the community served as well as a representative or representatives of the local public utility and local fuel dealers.

(2) The Project Advisory Committee should be the focal point of energy-related planning for the local administering agency; it can also play a major leadership rôle in the larger community, educating and influencing the non poor about the need for and the benefits accruing to them from energy conservation.

(3) It shall be the role of the Project Advisory Committee to recommend to the Grantee Board policies for guiding the development of the appropriate local response to energy problems of the poor, including policies for selection of dwellings to be weatherized and households eligible for crisis intervention assistance.

(4) It shall also be the role of the Project Advisory Committee to recommend to the Board standards of program quality to be met by each project. In the case of weatherization programs those standards shall include provisions designed to assure quality of materials and workmanship; and each Project Advisory Committee shall be responsible for recommending to the Board a system for inspection of completed work that will assure:

(i) That the principles of a balanced combination of energy conserving improvements as set forth in the "Community Planning Guide to Weatherization" have been adhered to;

(ii) That infiltration problems have been dealt with;

(iii) That insulation materials meet minimum Federal standards of effectiveness; (See CSA Pamphlet 6143-6, A Community Planning Guide to Weatherization, Appendix C); and

(iv) That quality of workmanship has been maintained, in accordance with standards described on pages 27–29 of the Community Planning Guide Weatherization, which include the following:

(A) Proper installation of insulation with vapor barrier toward heated space;

(B) Provision of ventilation in attic and/or crawl space;

(C) Proper density of loose fill or blown-in insulation to prevent excessive settling;

(D) Adequate protection of water pipes in unheated areas after installation of insulation; and

(E) Proper installation of attic floor insulation so that it does not touch roof at eaves.

NOTE 1: Projects may refer to In the Bank * * * Or up the Chimney, Published by the U.S. Department of Housing and Urban Development, Washington, D.C. 20410, for additional information on specific techniques and standards of workmanship.

NOTE 2: For a fuller discussion of the issues appropriate for Project Advisory Committee consideration and recommendations, see A Community Planning Guide to Weatherization, CSA Pamphlet 6143-6 p. 10.

(b) *Planning and assessment of need.* A major goal of all funded projects will be more accurate assessment of the local impact on the poor of energy shortages and price increases, and the development of a local planning capability involving major community resources to deal with both emergencies and long range implications of energy cost and availability. The Project Advisory Committee, using the information collected in the two required forms for energy programming, the Building Weatherization Plan and the Energy Data Form, will have a primary role to play in the local impact assessment.

(c) *Weatherization.* (1) CSA has issued "A Community Planning Guide to Weatherization," CSA Pamphlet 6143-6, which expresses in detail agency procedures governing the conduct of weatherization programs. In carrying out such projects, first priority must be given to stopping infiltration by repairing broken windows, patching roofs and walls, caulking cracks and joints, and weather-stripping doors and windows; second priority should be given to installing a balanced combination of energy-conserving home improvements including insulation of attics, floors, walls, and exposed heating ducts, and installation of storm doors and windows. Where needed, foundation banking, replacement of furnace filters, minor adjustments and repair of heating systems or replacement of dangerous heating sources, may be undertaken. Able-bodied residents of dwellings weatherized should wherever practicable contribute their services to the weatherization work. Where possible, costs of major building repair or heating system improvements should be supported with funds from other sources such as appropriate FmHA or HUD loans.

(2) All administering agencies shall procure liability insurance or bonding to cover any damage to persons or property in connection with weatherization activities, the cost for which shall be considered a program cost, not an administrative cost, and shall not be counted in figuring the ten percent non-material costs. Before beginning work on the weatherization of any dwelling the administering agency shall obtain from the (owner) (householder) permission to enter upon the premises and perform the weatherization work. In addition, where obtainable without objection from the householder (but in the case of at least ten percent of the dwellings worked on) administering agencies should obtain permission to inspect fuel and utility bills, in the following or equivalent language:

(Householder, or in the case of rental property where utilities are paid by landlord, Owner) hereby grants permission to (the administering agency) or its designee to inspect heating fuel and utility billing records for (address) for not more than five years before and subsequent to the performance of the weatherization work for the sole purpose of obtaining data required for evaluation of the energy conserving effectiveness of the work done, and directs the pertinent utility and fuel companies to make such records available to (the administering agency) or its designee.

(3) In the case of renter occupied dwellings, the goal of any weatherization project must be to assist low income tenants and to avoid enrichment of property owners. The primary effort of administering agencies must be to seek the enforcement of local codes and the mobilization of owner's resources for the installation of needed energy conserving improvements; and wherever projects do carry out weatherization of renter occupied dwellings, agreements should be obtained from property owners which include a provision that following the completion of the weatherization program the low income tenant shall not be evicted or removed from the dwelling for a stated period of time so long as he has complied with all on-going obligations and responsibilities owed the landlord or owner. Such agreements should, in addition, provide as follows:

(i) Where the owner or landlord pays for heating or cooling the dwelling, the agreement should provide either (*a*) that the owner or landlord shall reduce the rent over a stated period of time by an amount equal to the value of the weatherization materials supplied, and agrees not to raise the rental on the property beyond the preweatherization level for a stated period thereafter; or (*b*) that the owner or landlord shall repay to the administering agency or grantee over a stated period of time an amount equal to the value of the materials supplied, and agrees not to raise the rental on the property for such period of time and for a stated period of time thereafter:

(ii) Where the tenant pays for heating and cooling the dwelling, the agreement may provide merely that the owner or landlord agrees not to raise the rental on the property for a stated period of time.

(4) Any exceptions must be approved by the Administering Agency or Grantee on a case by case basis, on the recommendation of the Project Advisory Committee and based on documented need. Agreements obtained should be maintained in the files of

the Administering Agency or Grantee, and shall be made for inspection upon request.

(5) For each building on which weatherization work is done, a Building Weatherization Plan, CSA Form 481, must be completed, in accordance with directions provided in the Community Planning Guide to Weatherization, Part VI, pp. 16-26. Copies of the Building Weatherization Plan must be filed in accordance with Paragraph 11 of this Instruction.

(6) In any case where a Building Weatherization Plan indicates expenditures of more than $250 on any building in a project funded in Federal Region IV, VI, or IX, or more than $350 on any building in a program funded in Federal Region I, II, III, V, VII, VIII, or X, the expenditure must be justified in writing and approved by the Project Advisory Committee. Documentation of such justification and approval shall be made available to CSA upon request.

(7) Of funds allocated to weatherization activities, at least ninety percent shall be expended for materials costs. Beginning with FY 1975 funds, costs incurred by grantees for materials may include costs of delivery to work site and reasonable costs of tools and equipment required for installation, including blower equipment required for cellulose fiber or other loose fill insulation. Purchase of materials will be made in accordance with current CSA regulations governing such activities.

(8) Where administering agencies have documented bona fide attempts to secure labor, supervision, and/or transportation costs from other sources without success adequate to their needs, grantees may seek relief through their proposals or through a request for a work program amendment.

(d) *Crisis intervention.* (1) This immediate, short-term assistance, consisting of intervention to prevent hardship or danger to health due to utility shut-off or lack of fuel, should be followed with program efforts that will have a long-range effect on the individual's ability to conserve energy and pay fuel bills. Crisis intervention should not be used to provide help to persons having access to direct assistance through other supportive service networks such as welfare; rather, the administering agency should take all appropriate measures to assure the responsiveness of such networks to the energy needs of clients. Help from this Crisis Intervention Program should be provided only in cases of extreme crisis when other service networks cannot respond.

(2) In any case, actual payment of utility or fuel bills by this program should be a one-time crisis intervention resource to be considered only as a last resort after negotiation with utility or fuel companies; and care must be taken to avoid having the grants looked upon as a source of ongoing subsidy for energy costs of the poor.

(e) *Consumer information, education, and legal assistance.* (1) Studies indicate that residential use of energy is in large measure of function of the lifestyle of the residents of any particular dwelling; and consequently grantees should where possible conduct programs of energy conservation education in conjunction with weatherization projects.

(2) In addition, escalating costs of energy are causing increasing numbers of states and local communities to review utility rate structures and regulatory policies with interest in bringing relief to certain classes of customers. Wherever such reviews are taking place, whether in formal proceedings of regulatory commissions or merely informally, grantees should seek to involve themselves in order to insure that the interests of the poor are adequately represented, and that low income persons have the same high level of legal and technical expertise at their service as the utility companies and the other classes of energy users participating in these proceedings.

(3) Finally, as the need for energy conservation becomes more generally recognized there will be some who enter the field with the intent of exploiting those without technical knowledge or understanding of effective conservation techniques. Grantees should be aware of these dangers and work closely with state and local law enforcement and consumer protection

agencies to curb abuses and provide redress for victimized consumers.

(f) *Transportation.* Projects undertaking transportation activities supported with section 222(a)(12) funds shall assure (1) that such activities address the energy-related increased costs of transportation for the poor, (2) that projects designed to provide assistance in the purchasing of fuel shall do so only as a last resort, thereby minimizing the subsidy of high cost fuel, and (3) that maximum use is made of existing transportation resources.

(g) *Alternate energy sources.* Because of the more diffuse nature of alternate energy sources such as the sun, they should only be used on buildings which have been thoroughly weatherized through stopping of infiltration and installation of the optimal combination of energy conserving improvements.

(h) *Program Support: Research and Demonstration Programs.* (1) Section 232 provides the authority to conduct R&D projects to further the mandate of Title II, including section 222(a)(12). R&D projects in the area of emergency energy conservation shall directly contribute to the accomplishment of the ends of the Emergency Energy Conservation Services Program and shall conform to one or more of the following standards and definitions:

(i) Development of new approaches and/or methods that will aid in overcoming special problems of poverty through:

(A) Support of projects designed to provide conclusive information concerning the usefulness of a program or technique thought to have potential of major impact on an identified special problem. The generation of persuasive knowledge is the central goal of such efforts; the major criterion of success is the utility of the knowledge produced in designing projects which meet carefully defined needs of the poor.

(B) Support of individual projects or series of projects which test specific program strategies or techniques to deal with special problems of poverty. Such demonstrations are designed to (*1*) provide an experience base sufficient to determine the applicability of the strategy or technique; and (*2*) provide exposure for strategies and techniques to increase their acceptance and application by funding sources and policymakers.

(C) Support of projects which (*1*) directly intervene to change established institutions or (*2*) establish alternative institutions or mechanisms to serve poor people.

(ii) Collection and maintenance of appropriate data which is adequate to produce dissemination and utilization of project results.

§ 1061.30-11 Funding.

(a) *Funding Offices.* CSA Regional Offices will receive grant applications for operating projects including eligible activities set forth under §§ 1061.30-7(a) through 1061.30-7(d), above, and for Training and Technical Assistance to operating projects within their geographical area. CSA Headquarters, Washington, D.C., will receive grant applications for the development of Alternative Energy Sources described in § 1061.30(7(e) of this part, and Program Support Activities national in character, including Research and Demonstration Programs and Evaluation. All applicants submitting proposals to CSA Headquarters shall notify the appropriate Regional Office by means of the regional checkpoint procedures (OEO Form 394).

(b) *Non-Federal Share.* The non-Federal Share requirement is waived for Crisis Intervention and Program Support as defined in paragraph 7f (Training and Technical Assistance, Research and Demonstration, and Evaluation).

[41 FR 29125, July 15, 1976, as amended at 43 FR 9818, Mar. 10, 1978]

§ 1061.30-12 Application requirements.

(a) Research and Demonstration Proposals should be submitted in accordance with Instruction 7570-1. All other applications should meet the following requirements:

(1) *Required forms*—(i) *OEO Form 419.* Summary of Work Program and Budget (See OEO Instruction 6710-1) (Note: Goals and Activities must be consistent with the standards of effec-

tiveness for section 222(a)(12) projects and the General Standards for Title II Programs outlined in CSA instruction 7850-1a and Form 419 must reflect these standards).

(ii) *OEO Form 25.* Program Account Budget (See OEO Instruction 6710-1).

(iii) *SF-424 (Complete Sections I and II).* Federal Assistance (See CSA Instruction 6710-3a).

(iv) *OEO Form 25a.* Program Account Budget Support Sheet (See OEO Instruction 6710-1).

(v) *OEO Form 301.* Summary of Grant Application (See OEO Instruction 6710-1) For new grantees only.

(vi) *CAP Form 5.* Application for CAP-Community Information (See OEO Instruction 6710-1) For uncapped areas except for CDCs funded under Title VII.

(vii) *CAP Form 84.* Participant/Characteristics Plan (See OEO Instruction 6710-1) Require for uncapped areas except for CDCs funded under Title VII.

(viii) *CAP Form 11.* Assurance of Compliance with Regulations under Civil Rights Act (for new grantees only).

(ix) *OEO Form 394.* Checkpoint Procedure for Coordination. (Note: This is optional and may be used by the funding official under circumstances detailed in CSA Instruction 6710-3a).

(x) Narrative Proposal (See Section b, below).

(2) *Contents of narrative proposal.* The narrative proposal should include a brief narrative of each energy project in terms of:

(i) Description of problems addressed and the numbers affected, as reflected in Building Weatherization Plan and Energy Data Form, where available.

(ii) Past efforts in this project area and capacity to expand those efforts.

(iii) Given local community priorities, why this proposed solution is both feasible and most relevant.

(iv) Non-CSA resource opportunities available for this project include coordination with other Federal agencies such as HUD, EDA, Title X, FmHA, CETA, AoA, RSVP, Title XX Emergency Assistance for families under HEW, and mobilization of state and local resources.

(v) Projected results for each project effort with a unit cost estimate where appropriate.

§ 1061.30-13 Reporting requirements.

(a) To avoid duplication of reporting procedures, CSA is establishing a uniform data collection and reporting system for all energy conservation activities. In addition, selected grantees and agencies may from time to time be requested to submit additional project information.

(b) Each funded grantee and delegate agency will be required to submit to the appropriate CSA Regional Office two copies of the Energy Data Form quarterly, based upon the grantee's or delegate agency's program year and concurrently with the submission of CSA Forms 315 and 315a. Energy Data Forms are to be submitted to the appropriate Regional Office by the 20th day following the end of the report quarters. In the case of statewide grantees, or other grantees which delegate to more than one delegate agency, Energy Data Forms must be completed by each administering or delegate agency for their project and target area, and submitted concurrently with that agency's CSA Forms 315 and 315a. Each funded grantee will also be required to submit to the appropriate Regional Office on a monthly basis, by the tenth day of the succeeding month, two copies of the completed Building Weatherization Plan for each dwelling on which work has been carried out during the month.

NOTE: To comply with the Privacy Act of 1974, Pub. L. 93-579, grantees should delete name and address of householder from the Building Weatherization Plan on copies submitted, making sure that a job number is assigned to each Plan.

§ 1061.30-14 Additional requirements.

(a) *Administrative costs.* All program funds under section 222(a)(12) are subject to a limitation of ten percent for administrative costs as defined in OEO Instruction 6807-1.

(b) *Evaluation.* It is anticipated that the evaluation of energy programs will be twofold in nature. The first will be self-evaluation by the funded grantees, as required in OEO Instruction

7031-1. The second will be national in character and based on the data to be reported in accordance with Paragraph 11.

(c) *Checkpoint coordination.* Applicants must follow the Project Notification and Review System procedures outlined in CSA Instruction 6710-3a. Exception: Applications or portions of applications for training and technical assistance, research and evaluation.

Subpart 1061.31—Emergency Energy Conservation Program (CSA Instruction 6143-2)

SOURCE: 41 FR 52876, Dec. 2, 1976, unless otherwise noted.

§ 1061.31-1 Applicability.

This subpart is applicable to all grantees (or administering agencies) receiving financial assistance under Title II, section 222(a)(12) of the Community Services Act of 1974 when such assistance is administered by the Community Services Administration.

§ 1061.31-2 Definitions.

(a) "Elderly" means persons who are sixty years of age or older.

(b) "Seasonal Farmworker" shall mean a person who during the preceding twelve months worked at least 25 days in farm work and worked less than 150 consecutive days at any one establishment. "Seasonal Farmworker" includes both migratory and nonmigratory farmworkers, but does not include nonmigratory individuals who are full-time students or supervisors or other farmworkers.

(c) "Migrant farmworker" shall mean a seasonal farmworker who performs or has performed during the preceding twelve months agricultural labor which requires travel such that the worker is unable to return to his/her domicile (accepted place of residence) within the same day.

(d) "Handicapped" means those individuals who meet the definition of "handicapped" individuals as defined in section 7(6) of the Rehabilitation Act of 1973, as amended, or who are under a disability as defined in section 1614(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Act of 1970, as amended, or who are receiving benefits under Chapter 11 or 15 of Title 38, United States Code.

(e) "Indian Tribe" means any tribe, band, nation, or other organized group or community of Indians including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92-203; 85 Stat. 688) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

§ 1061.31-3 Purpose.

The purpose of this subpart is to require grantees who conduct projects under section 222(a)(12) to periodically submit CSA Form 488 Energy Data Form. This form will accomplish the following:

(a) It will provide CSA with a quarterly picture of grantee provision of services through eligible activities in Energy programming, as defined in CSA Instruction 6143-1a, with data on services to significant populations, indication of known universe of need, and an estimate of planned activities for the next quarterly reporting period;

(b) It will provide a quarterly financial profile of grantee energy programming including all relevant financial data needed to assess the grantee's fiscal position.

§ 1061.31-4 Policy.

Each grantee conducting projects under Section 222(a)(12) of the Community Services Act shall submit CSA Form 488, Energy Data Form, to CSA on a quarterly basis.

§ 1061.31-5 General instructions.

(a) *When to Report.* CSA Form 488 (EDF) shall be submitted quarterly based on the grantee's program year, and in conjunction with the submission of CSA Forms 315 and 315a. For example, if the program year starts on February 1, EDF reports would be prepared for the quarters ending April 30, July 31, and October 31, and would be due in the appropriate offices 20 days after each of the quarterly ending dates.

(b) *Reporting delegate agency* (administering agency) data. Each delegate or administering agency shall submit a completed CSA Form 488 to its grantee who, in turn, shall submit a consolidated report to the funding office(s) as required above.

(c) *Number of copies to prepare.* Each grantee shall prepare sufficient copies of CSA Form 488 (EDF) for each quarter of a program year to make the distribution shown below.

(d) *Where to send reports.* (1) Each grantee shall submit 2 copies of CSA Form 488 to the funding office from which support for its program is derived.

(2) Grantees receiving support from more than one funding office, shall send 2 copies to each.

(3) Timely and accurate completion of the Energy Data Form shall be a factor in assessing grantee capability and performance in energy programming.

§ 1061.31-6 Detailed instructions[1] for completing CSA Form 488 (EDF).

(a) *Section I: Identifying information.* (1) *Name of grantee* (*or administering agency*). Self-explanatory.

(2) *Staff assigned to energy.* Enter the numbers of full and part-time staff engaged in energy programming during the quarterly reporting period. Include subsidized labor, such as CETA or Title X workers, but not volunteers.

(3) *Quarter ending* (*month and year*). Enter the appropriate number of the month ending the quarter, and last 2 digits of the calendar year. (For example, a report for the quarter ending April 30, 1976 should be identified as: 04/76.)

(4) *Grantee No.* Enter five-digit number assigned by CSA to each agency. It should not include action numbers or fund source code letters.

(5) *State.* State identification should be reported as the two-letter postal abbreviation.

(6) *Service area.* If the geographical area in which energy activities are carried out is the same as the CAA-coverage area, check the space in front of that phrase. If, in addition you provide energy services to some non-CAA areas, that space should be checked, and the non-CAA areas should be listed.

(b) *Section II: Services.* (1) The ability to report the specialized information requested in the following categories depends on the accuracy of a grantee's intake system. Many grantees have devised locally efficient intake forms that provide us this kind of information. If, however, you have not devised such a system, you may wish to take advantage of other grantees' experience and use the Optional Core Intake Form derived from that experience. Such forms can be supplied by your Regional Energy Coordinator.

(2) *Total services.* Enter the total numbers served for each of the eligible activities carried out by the project during the reporting period. (For example, a grantee operating a weatherization project component and a crisis intervention service would enter the total number of houses weatherized, e.g. 100, in the block (A) and the total number of clients served in the crisis intervention component in block (B) e.g. 20. If no other energy activities were carried out, no other numbers would appear in this horizontal row.)

Under Total Services you will find five categories of special populations to whom the services may have been provided. The categories are not mutually exclusive, so they may add up to more than the total services figure. If, for instance, a household served had residents that were both elderly and handicapped, that household would appear in both 1.A. and 1.C.

(3) *Applicants on file.* Report on the number of requests for services of each type accumulated by the project, but not yet served. (If, for example, the 100 houses weatherized this quarter were the first 100 to be done out of a total of 1000 requests, the applicants

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[1] The CSA Form 488 (EDF) published at 41 FR 42876, Dec. 2, 1976, is not carried in this volume and is available from Community Services Administration at 1200 19th Street, Washington, DC 20506.

on file, but not yet served would remain at 900.)

(4) *Activities planned next quarter.* Estimate of services planned for the upcoming quarter in each of the eligible activity areas carried out by the grantee. (This figure should be a reasonable and realistic estimate of the planned activities for the subsequent quarter's effort, and should bear a logical relationship to the anticipated expenditures shown on CSA Form 315. For example, a grantee anticipating the addition of Title X workers during the next quarter might show a substantial increase in planned weatherization activities, while a grantee facing the onset of winter might plan that fewer units could be weatherized. In either case, the estimate of services planned should be as accurate as the current situation permits.)

(5) *Section III: Financial information.* Report on each category of funds expended during the reporting period by source of funds to carry out the services shown in Section II. For example, if the weatherization of 100 houses is shown in Section II, the sources of funds for that activity should appear in the Section III column under weatherization. Suppose the total amount spent to weatherize those 100 houses was as follows:

$10,000 of Section 222(a)(12) money.
$10,000 in FmHA loans.
$5,000 of Title X labor.
$5,000 of CETA labor.
$1,000 HCD Title I.
$500 local United Fund contribution.

Each of these $ amounts should appear as an identified source of funds in the weatherization column of Section III, as shown below:

The final horizontal row on the page should be the total amount of funds contributed from all sources to carry out the activities reported above.

NOTE: There are many possible sources of Federal, State, local and private funds which have not been spelled out. However, use additional spaces provided in Section III to identify sources from which you have received funds other than those preprinted.

(6) *Section IV: In kind contributions.* Report non-monetary contributions used by the grantee in conducting its program during the quarterly reporting period. For example, if the funds expended on weatherization were supplemented by 500 man-hours of Project Mainstream labor, 50 donated storm doors, and free transportation of those storm doors to the job sites, these in-kind contributions should be detailed as shown below.

Subpart 1061.50—Community Food and Nutrition Programs (CSA Instruction 6132–2a)

SOURCE: 45 FR 33789, May 20, 1980, unless otherwise noted.

§ 1061.50–1 Applicability.

This subpart is applicable to all grants and contracts and cooperative agreements funded under section 222(a)(1) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1061.50–2 Definitions.

(a) *Program.* The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specific activities. Example: CSA's Community Food and Nutrition Program.

(b) *Project.* The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program. Example: The School Breakfast Expansion Campaign of the Milwaukee CAP.

(c) *Limited Purpose Agency.* An organization or agency funded under section 221 or 222 of the Act to conduct a specific project or projects, rather than the broad spectrum of projects conducted by a CAA. Limited purpose agencies are not subject to the requirements for local government designation and comprehensive community representation applicable to CAA's.

(d) *"Un-capped Area".* An "uncapped" area is any geographical area not officially served by a community action agency. An area officially served by a CAA is that area designated by the local government and recognized as such by CSA.

(e) *Catalytic Activity.* According to the dictionary, a catalyst is "a person or thing acting as a stimulus in bringing about or hastening a result". In this rule, "catalytic activity" means an activity which, through a modest investment of CFNP staff time and money, sets in motion a process or series of events which results, for low-income persons, in benefits that are far-reaching and whose value significantly exceeds the cost of the original investment [See Appendix A, for further clarification].

(f) *Direct Service Delivery.* One-on-one activity (for example, outreach activity) whose purpose is to provide goods or services directly to low-income individuals or families. The provision of services can be catalytic or non-catalytic activity. It is catalytic if it triggers a process that is carried forward by the individual, either on his own or with the assistance of groups or agencies other than the CFNP project. (See Appendix A, for additional clarification.)

(g) *Advocacy.* According to the dictionary, an *advocate* is "one who pleads the cause of another" or "defends or maintains a cause or proposal." In this rule, advocacy means a type of catalytic activity which is directed at institutions or at the general public on behalf of low-income individuals in order to insure that, in the area of food and nutrition, the views of such individuals are heard, their rights are observed, the benefits to which they are entitled are provided, and their needs are met (to the extent possible) by the institutions which have the ability or responsibility to meet those needs. Successful advocacy can bring about either *institutional change* (a change in a law, regulation, policy, procedure, behavior or attitude affecting the low-income population) or a *mobilization of additional resources* (whether they be dollars or in-kind services) from public or private sources to support food and nutrition programs for the low-income population. (See Appendix A, for further clarification.)

(h) *Monitoring.* Monitoring is a variety of advocacy. To "monitor" is to "observe critically". To monitor a program operated by another federal or state agency means to *observe critically* that program; to gather relevant information about its operations in order to make sure that it is adhering to relevant statutes and regulations in its delivery of services to low-income families and individuals; and where there are problems, to bring them to the attention of the administering agency and to assist that agency in finding a solution. (See Appendix A, for further clarification.)

(i) *Anti-hunger Coalition.* An anti-hunger coalition is an alliance of various individuals, groups and organizations whose purpose is to serve as an advocate for the poor in addressing (1) a broad range of problems and issues in attempting to alleviate hunger and malnutrition among the poor or (2) a narrow range of such problems and issues (e.g., the operation of the WIC program) over a wide area (e.g., throughout a whole state). A coalition may include such groups as: Community Action Agencies, Community Food and Nutrition grantees, the poor (or other organizations representing them), churches, foundations, private organizations serving the poor, etc.

§ 1061.50-3 Purpose of subpart.

This subpart sets forth CSA's policy for the Community Food and Nutrition Program (CFNP) authorized under section 222(a)(1) of the Economic Opportunity Act of 1964, as amended. It discusses the purposes and categories of activities, participant and applicant eligibility criteria, application procedures and reporting requirements. The Appendices provide additional information relating to the meaning of certain terms, general policy, rating and ranking criteria, and addresses and names of key contact persons for CSA Regional Offices and migrant conduits.

§ 1061.50-4 Introduction.

(a) Section 201(a)(1) of the Economic Opportunity Act of 1964 as amended states that the basic purpose of all Title II programs including the Community Food and Nutrition Program, is "* * * to *stimulate* a better focusing of all available local, State, private and Federal resources upon the goal of enabling low-income families and low-income individuals * * * *to become fully self-sufficient"* (emphasis added).

(b) This statement sums up CSA's historic mission which has been to serve as a *stimulator* or *catalyst* of activities conducted by other public and private institutions rather than as a provider of services in competition with these institutions. CSA's limited funds make it necessary, in any event, for CFNP projects to limit their involvement in non-catalytic direct service delivery and to function primarily as advocates and catalytic agents.

(c) A second important point made in the statement quoted above is that the catalytic activity of Title II programs, including the CFNP, should be directed to helping the poor escape the cycle of poverty. The relevance of the CFNP to this objective is underscored by a report entitled "Dietary Goals for the United States" (2nd Edition) issued in February 1978, by the U.S. Senate's Select Committee on Nutrition and Human Needs. According to the report, an inadequate diet is a principal cause of six of the leading killer diseases—the six being diabetes, strokes and hypertension, heart disease, some cancers, arteriosclerosis and cirrhosis of the liver. An inadequate diet is also one of the factors which leads to unemployability and chronic dependence on public assistance programs. Hence the importance of a concentrated attack on the problem of malnutrition among the poor.

§ 1061.50-5 Policy.

(a) Section 222(a)(1) of the Economic Opportunity Act authorizes:

> A program to be known as Community Food and Nutrition designed to provide, on an emergency basis, directly or by delegation of authority pursuant to the provisions of Title VI of this Act, financial assistance for the provision of such supplies and services, nutritional food-stuffs, and related services as may be necessary to counteract conditions of starvation or malnutrition among the poor. Such assistance may be provided by way of supplement to such other assistance as may be used to extend and broaden such programs to serve economically disadvantaged individuals and families where such services are not now provided.

(b) In its effort to "supplement and extend and broaden" other Federal food programs, the CFNP must not lose sight of the essentially *catalytic* nature of CSA's mission referred to in § 1061.50-4 of this subpart. Funds should be used primarily as seed money or in ways that have a multiplier effect, not for duplicative or long-term feeding programs. The emphasis on catalytic activity does not preclude the use of CFNP funds, in emergency situations, for the direct delivery of foodstuffs and related services (e.g., food vouchers or food boxes) so individual families within CSA poverty guidelines who are insufficiently served or not served at all by other programs (see § 1061.50-7(d)(4) of this part). Benefits received under the CFNP shall not be considered as income for purposes of determining eligibility for other federal programs.

(c) Each CFNP project will be expected to include *advocacy* as an *essential* and *integral* element of both its design and implementation. While an applicant may select the program category (Access, Self-Help, Food Supply, Crisis Relief, and Nutrition and Consumer Education) which best meets the needs of the poor in the community served, the element of advocacy should always be a part of whatever category is selected. Advocacy efforts should focus upon articulating the views and needs of the poor to the public at large but, more particularly, to those institutions and organizations which have the ability or responsibility to serve the poor. Advocacy efforts should not only include speaking *on behalf of the poor*, but helping the poor to articulate their own needs and to participate in activities which are designed to assure that the benefits to which the poor are entitled are provided. Advocacy should be aimed at initiating new programs to benefit the poor as well as improving and expanding existing ones.

(d) All CFNP projects will be expected to conform to as many of the purposes of Title II programs as possible (listed below in § 1061.50-6 of this subpart). Subpart § 1067.4 of this chapter requires that each project contribute to the achievement of one or more purposes. CSA is requiring that CFNP grantees meet at least three general purposes and one specific purpose of

Title II programs. Applicants are advised that the rating criteria (see Appendices B through F) include three of the six purposes.

§ 1061.50-6 Purpose of the program.

(a) The following are the purposes of Title II programs, including the CFNP, found in sections 201(a) and 222(a) of the Economic Opportunity Act of 1964 as amended and reflected in CSA's general standards of effectiveness:

(1) *Planning and Coordination.* Strengthened community capabilities for planning and coordination so as to insure that available assistance related to the elimination of poverty can be more responsive to local needs and conditions;

(2) *Improvement of Service Delivery.* Better organization of services related to the needs of the poor;

(3) *Maximum Feasible Participation.* Maximum feasible participation of the poor in the development and implementation of all projects designed to serve the poor;

(4) *Mobilization of Resources.* Broadened resource base of programs directed to the elimination of poverty so as to include all elements of the community able to influence the quality and quantity of services to the poor;

(5) *Innovative Approaches.* Greater use of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing resources;

(6) *Maximum employment Opportunities.* Employment of the poor, including opportunity for further occupational training and career development, in the programs and projects administered to serve the poor.

(b) The following are legislatively-mandated purposes of the Community Food and Nutrition Program (Specific Standards of Effectiveness):

(1) *Improvement in the nutritional status of the target population.*

(2) *Reduction in hunger among the target population.*

§ 1061.50-7 Program categories.

The categories eligible for funding under the Community Food and Nutrition Program are described below and are listed in priority order.

(a) *Access.* Access activities are focused on the public sector and are aimed at improving the opportunities for low-income people to gain access to, and participate in, food and nutrition programs sponsored by the federal, state and local governments and at making sure that these programs operate effectively, efficiently and fairly. They also seek to involve the poor in shaping public policies which have an effect upon the nutritional status of the poor. Activities eligible for funding under the "access" category include, but are not limited to:

(1) The monitoring of programs conducted by other agencies and in particular monitoring the implementation by USDA and state and local governments of the Food Stamp Act of 1977, in order to insure compliance with relevant federal and state statutes and regulations;

(2) Seeking changes in Federal and state statutes and regulations to insure a more equitable distribution of food and nutrition benefits to the poor;

(3) Stimulating through consultation with parents, school administrators and other officials, the establishment or expansion of various federally funded food programs such as; the School Breakfast and School Lunch Programs, the WIC Program, the Summer Food Service Program for Children, the Nutrition Program for the Elderly, etc.

(4) Participating with a state in the development of state plans, certification manuals, etc., for food and nutrition programs;

(5) Building coalitions to make possible community input into the improvement and implementation of programs which improve the nutritional status of low-income persons;

(6) Initiating, or stimulating the formation of, community education programs aimed at apprising low-income persons of their entitlements under federal and non-federal food programs;

(7) Stimulating efforts to provide the poor with assistance in prescreening and application procedures and

with adequate representation in administrative hearings, etc.;

(8) Initiating or stimulating the formation of feeding programs (e.g., Meals on Wheels) which are urgently needed and are not being provided in the community, on the condition that significant mobilization of other resources and early spin-off of the project to a more appropriate agency is included in the application;

(9) Designing and carrying out strategies for obtaining matching funds for new and existing projects supported from CFNP funds, and for spinning off such projects to other agencies (e.g. projects funded under HEW and USDA such as Title XX or food stamp outreach);

(10) Catalyzing an expanded and more effective outreach program on the part of other agencies; (See discussion on outreach in Appendix A).

(b) *Self-Help.* Self-Help activities are those which are aimed at improving the ability of low-income people to produce, preserve, purchase or market their own foodstuffs. These foodstuffs may and often do supplement those provided by federal feeding programs or by private sector institutions.

NOTE: Applicants for Self-Help projects which by design should ultimately become self-sustaining, e.g., food co-ops, buying clubs, and canneries, should include in their applications specific plans for the eventual phase-out of CFNP funding.

Activities eligible for funding under this category include but are not limited to:

(1) Conservation, distribution and utilization of foodstuffs, such as:

(i) Organizing family and community gardens;

(ii) Organizing food co-ops and buying clubs (See discussion in Appendix A on the National Consumer Cooperative Bank);

(iii) Establishing greenhouses, canneries, etc.;

(iv) Organizing food gleaning campaigns (Note: A number of states have passed legislation providing a tax benefit for small unincorporated farmers who donate excess produce to organizations serving the low-income population, while similar legislation is being proposed in Congress).

(v) Organizing efforts in which the food produced by small local farmers is purchased and utilized in other federal feeding programs, e.g. School Breakfast, School Lunch, Day Care, WIC, Summer Feeding, etc.;

(vi) Initiating "farmer to market" projects in which the food produced by small farmers is made available to the poor at lower prices;

(vii) Undertaking efforts to allow small farmers and food co-ops to accept, and non-profit organizations serving the poor to issue, food stamps;

(2) Activities which support self-help projects such as:

(i) Mobilizing the resources of state agriculture departments, land grant colleges, co-op extension services, USDA (e.g., the Agricultural Stabilization and Conservation Service), VISTA, CETA, etc., for obtaining seeds, plants, land, water and information;

(ii) Cooperating with land grant and other colleges to provide more assistance to small-scale (even part-time) growers, etc.;

(iii) Promoting the utilization of unused federal, state, and local land for food production by the poor.

(c) *Food Supply.* The category of Food Supply denotes activities aimed at the private sector whose purpose is to involve the poor more directly in the food distribution process, to encourage the food industry and other elements of the private sector to become more involved in and supportive of efforts to help solve the nutritional problems of the poor, and to make more nutritious food available at lower prices. Activities eligible for funding under this category include, but are not limited to:

(1) Developing and seeking to get adopted innovative proposals to increase the amount of food available to the poor;

(2) Seeking changes in laws and regulations that impede the involvement of the poor in food production, processing, distribution, etc.;

(3) Organizing consumer action relating to public and private sector food policies and food sales, e.g., mobilizing public and private support for the elimination of food sales taxes;

(4) Establishing food banks which serve as clearinghouses for food donated by private industry for redistribution to the poor and encouraging food producers, processors, wholesalers and retailers to contribute food to such banks;

(5) Encouraging food retailers to join with city governments and community-based groups to bring supermarkets back to the inner-city through mutual development ventures, special tax and/or other municipal incentives;

(6) Enlisting food retailers in conducting training programs to sensitize food store employees to the needs and problems of food stamp shoppers so as to reduce the intimidation and inconvenience often caused such persons;

(7) Encouraging food wholesalers and retailers to hire the poor;

(8) Encouraging industry to help limit unnecessary cost to consumers by adopting more responsible packaging and advertising practices, such as:

(i) Making available a variety of inexpensive, quality foods in order to promote optimum nutrition among the poor;

(ii) Making available food in smaller packages at more reasonable prices for the elderly, single and single parent households;

(9) Getting retailers to adopt and support innovative approaches to marketing, such as mobile markets, transporation to existing outlets for those who need it, stocking locally-produced foods, etc.;

(10) Enlisting the support of retailers for the establishment of consumer monitoring and advisory panels which reflect the needs and opinions of all sectors of the community.

(d) *Crisis Relief.* To improve community crisis relief mechanisms. Activities eligible for funding under this category include but are not limited to:

(1) Organizing food pantries and emergency food box projects;

(2) Negotiating for improvement in public welfare systems for distributing, in natural disasters and widespread emergency circumstances, Emergency Food Stamps, WIC packages or vouchers, USDA commodities, local food bank resources, etc. Among federal agencies the U.S. Department of Agriculture, in conjunction with the Federal Disaster Assistance Administration, is responsible for the delivery of foodstuffs to needy households in disasters and other wide-spread emergencies.

(3) Assisting communities to improve their crisis relief programs so that those most in need will receive swift relief;

(4) Providing foodstuffs directly and/or issuing food vouchers, but only if at least one of the following conditions is satisfied:

(i) There is a temporary individual or family emergency and timely help is not forthcoming from other agencies or,

(ii) The provision of relief is a catalytic effort which includes a plan to establish a community-based entity which will provide such services in the future, or a plan to transfer the activities, within a specified period of time, to an agency which already has an assigned responsibility for providing foodstuffs, vouchers, etc. to the poor. A commitment from such an agency to take over the project should be included in the application, if possible.

(e) *Nutrition and Consumer Education.* To improve, through catalytic activity in the area of nutrition and consumer education, the ability of low-income individuals and families to understand the connection between diet and health, to obtain at the lowest prices nutritionally superior foods and to prepare and preserve these foods in ways that minimize the loss of nutrients. Activities eligible for funding under this category include but are not limited to:

(1) Developing and demonstrating new and more effective techniques for communicating nutritional information to the poor;

(2) Stimulating the establishment by other agencies or institutions of educational programs to acquaint the low-income public with the potential benefits of altering food preparation and eating habits in the light of the "Dietary Guidelines for Americans" promulgated recently by USDA and DHEW. (Copies of a pamphlet containing these guidelines can be obtained from the Home Economic Ex-

tension Agent in your county's Agricultural Extension Office);

(3) Stimulating the establishment of educational programs to improve the ability of low-income individuals and families to understand written guidance on food selection and to make comparisons between foods based on nutrition labeling and price;

(4) Engaging in advocacy efforts to induce federal agencies such as USDA and HEW to design new (and redesign existing) nutrition and consumer education programs so they are more responsive to the needs of low-income consumers;

(5) Devising and carrying out strategies to insure that state nutrition education plans address the needs of children, teachers, and food service workers in schools and low-income communities and that advisory councils set up to oversee state nutritional education programs include representatives of the poor;

(6) Engaging in advocacy efforts to induce such private organizations as the American Dietetic Association, American Heart Association and American Diabetes Association etc., to direct more of their nutrition education to the poor, and to coordinate such activities with CSA's CFNP network;

(7) Engaging in research to determine the status and quality of nutrition efforts aimed at the poor, identify gaps in those efforts, and recommend ways in which CSA, CAA's and CFNP grantees should be involved in nutrition education.

§ 1061.50-8 Eligible participants.

(a) All activities supported from CFNP funds must be targeted on low-income individuals and families as defined in CSA Income Poverty Guidelines (See § 1061.2 of this chapter). It is important to stress this since in the case of some programs, such as the Food Stamp Program and the National School Lunch Program, the persons eligible for benefits form a larger group than those who fall within CSA poverty guidelines. In such cases, the rule of thumb should be that a *majority* of the individuals or families served are within CSA guidelines.

(b) Individuals are eligible to participate upon a self-declaration of need without the delay of a "means test" or income investigation. Self-declaration of need makes possible immediate assistance for those suffering from hunger and in danger of malnutrition.

§ 1061.50-9 Eligible applicant.

(a) *General Community Projects.* (1) Section 222(a) of the Economic Opportunity Act states that the Director shall provide financial assistance ". . . in a manner that will encourage, wherever feasible, *the inclusion of assisted projects in community action programs . . .*" (emphasis added). In addition, section 222(a)(1) of the Act requires that the Director carry out the CFNP ". . . in a manner that will insure the availability of . . . supplies and services, nutritional foodstuffs and related services *through a community action agency where feasible,* or other agencies and organizations if no such (community action) agency exists or is able to administer the program) . . ." (emphasis and parentheses added).

(2) Therefore Community Action Agencies (CAA's) will be regarded as *prime sponsors* of projects utilizing general community funds. Any other organization desiring to operate a project in a geographical area served by a CAA must do so as a delegate agency of the CAA. If such organizations are unable to work out a delegate agency agreement with the CAA, then they may apply *directly* to the appropriate Regional Office of CSA. However, such applications will be considered *only if* the CAA does not submit a proposal, or submits a proposal which is not funded. (The deadline for submission of applications by prospective delegate agencies outlined in paragraph 2 of this chapter do not apply to this program.)

(3) Other public and private, nonprofit organizations, including SEOO's and CAP Associations, which meet CSA's general eligibility criteria may apply directly to the appropriate CSA Regional office for general community funds to operate projects in geographical areas not served by CAA's ("uncapped areas").

NOTE: CAA's are not precluded from operating projects outside their officially designated boundaries where they are otherwise legally permitted to do so.

Where no statewide anti-hunger coalition exists, a CAP Association may apply for General Community Funds to initiate and establish such a coalition. The CAP Association must, however, assure substantive participation by the poor and anti-hunger groups/organizations in the planning, implementation and evaluation of the project. This may be done by (i) including representatives from these groups on the applicant's governing board, (ii) establishing an advisory committee which includes representatives of the poor and anti-hunger organizations, or (iii) establishing a delegate agency to administer the project whose governing board includes representatives of Community Action Agencies, the poor, and anti-hunger organizations (See § 1062.200–4 of this chapter).

(4) State Economic Opportunity Offices (SEOO's) and CAP Associations may not apply as conduits for other applicants when the purpose or effect of such an arrangement is to allow those applicants to avoid the competitive process. As an exception to CSA's general policy, SEOO's and CAP Associations may apply as a conduit for other applicants within a state where the following conditions are met: (i) The applicant has CSA's written advance approval, (ii) the low income residents of the area to be served were involved in the planning of the project, and (iii) two or more of the following activities are carried out on a statewide basis: (A) Advocacy, (B) improved planning and coordination, and (C) mobilization of a broader range of resources. In such a case the complete work programs and budgets of the delegate applicants must be submitted to CSA along with the conduit application. These applications will then be reviewed, rated and ranked on a competitive basis like any other application, and they must receive a minimum score of 65 points in order to be considered eligible for funding. Likewise the work program and budget of the conduit will be rated and must receive a minimum score of 65 points.

(5) CAA's and anti-hunger groups are strongly encouraged to work together were possible. This can take the form of a CAA's delegating part or all of its work program to an anti-hunger group, or vice versa; close and systematic coordination on the part of both groups in the planning, implementation and evaluation of CFNP projects; and *close collaboration in the development of state anti-hunger strategies.* The formation of such alliances contributes to at least *one* of the general standards of effectiveness (planning and coordination) and in most cases will contribute to more.

NOTE: CAA's must indicate in their applications the efforts which have been undertaken to involve various community groups and organizations—including anti-hunger organizations—in the planning and implementation of their proposed activities. In the rating and ranking of applicants points will be given to applicants who furnish evidence that such coordination has taken or will take place.)

(b) *Special Support Projects.* (1) Public and private non-profit organizations which meet CSA's eligibility criteria—other than CAA's, SEOO's, and CAP Associations—may apply for special support funds.

(2) Special support projects must be designed to have a *broad impact* on the problems of hunger and malnutrition among the poor, i.e., an *impact* that extends beyond the boundaries of particular communities. The objective of special support projects is to assist in the development, coordination and expansion of food and nutrition programs for the poor and/or engage in advocacy efforts to improve those programs on a statewide or multi-state basis.

(3) Special support projects must relate to one or more of the five program categories outlined in § 1061.50–7 of the subpart. Special support activities may include but are not limited to:

(i) Developing or strengthening statewide or multi-state anti-hunger coalitions and task forces;

(ii) Monitoring and interpreting changes in relevant federal and state laws, regulations, and procedures;

(iii) Developing or improving statewide food and nutrition information centers or clearinghouses;

(iv) Initiating and/or stimulating the provision by others (e.g., grantees of the National Legal Services Corporation) of legal services aimed at improving the delivery of food and nutrition services to the poor.

(v) Providing assistance to low-income individuals or their representatives to attend meetings and conferences on food and nutrition issues, etc.

CSA, as a matter of policy, encourages the establishment of statewide anti-hunger coalitions which address a broad range of hunger problems and issues. Therefore, in making funding decisions on applications for special support funds, CSA will give preference to such coalitions over other types of special support projects. Special support applicants are reminded that they must meet CSA's requirements regarding participation of the poor (See § 1060.1 of this chapter). In addition they must substantively involve Community Action agencies in the planning, implementation and evaluation of the project. This can be accomplished by having CAA representatives on their governing boards or establishing advisory committees which include CAA representatives.

(4) Applicants must show evidence of successful experience and competence in carrying out the kinds of activities described above. *In addition, applicants must indicate on their applications how CAA's have been involved in the planning of the projects and how they intend to coordinate their proposed activities with: CAA's in or adjacent to the areas they propose to serve; other CFNP grantees and the SEOO in the state(s) where the project will operate.*

(c) *Regional Training and Technical Assistance (T&TA) Projects.* (1) Public and private non-profit organizations and agencies which meet CSA's general eligibility criteria may apply for Regional T&TA funds. Regional T&TA providers may operate on either a regionwide or subregional basis.

NOTE: Applicants for T&TA funds may not serve as a conduit for, nor delegate portions of their work program to profit-making firms.

(2) Applicants for Regional T&TA projects must present in their applications a detailed statement of the following:

(i) The kinds of T&TA they propose to deliver;

(ii) How they intend to go about it;

(iii) A timetable for the delivery of such;

(iv) The results they expect to achieve; and

(v) How they plan to evaluate results.

(3) T&TA applicants must indicate how they will assist CFNP grantees to achieve or carry out the major policy initiatives of the CFNP, such as:

(i) Shifting the emphasis from service delivery to catalytic activity;

(ii) Undertaking advocacy as a major component of each CFNP project;

(iii) Effective techniques of mobilizing public and private resources; and

(iv) Coordinating activities with other institutions and organizations involved in anti-hunger efforts.

(4) In the area of program planning and management, T&TA applicants must indicate how they will assist CFNP grantees in more precisely determining the nutritional problems and needs of low-income individuals, how to set priorities, establish realistic goals, design project strategies, and evaluate results.

(5) T&TA applicants must demonstrate in their proposals an understanding of the five program categories described in § 1061.50-7 of this subpart and an ability to assist CFNP grantees in carrying out the activities listed there. Applicants should have an expert knowledge of the various federal feeding programs (such as Food Stamps, School Breakfast, School Lunch, WIC, Day Care Food, Nutrition Program for the Elderly, etc.) and the ability to transfer such knowledge to CFNP grantees. Applicants should have prior successful experience in such activities as:

(i) How to organize coalitions and effectively conduct campaigns or other activities to initiate or expand the various federal feeding programs listed above;

(ii) How to stimulate the establishment of more effective outreach efforts by the agencies which administer these programs;

(iii) How to "monitor" such programs to assure their compliance with relevant statutes and regulations;

(iv) How to organize family and community gardens, food co-ops and buying clubs, etc. and assist them to become self-sustaining;

(v) How to train low-income residents to seek and obtain assistance from agencies which have a responsibility to serve them (such as agricultural extension services) or to speak on their own behalf in seeking benefits from agencies (e.g. Food Stamp "fair hearings");

(vi) How to help CFNP grantees engage in advocacy efforts to induce federal and state agencies to design new and redesign existing nutrition education programs so they are more responsive to the needs of low-income consumers; and

(vii) How to organize crisis relief mechanisms supported and sustained by a variety of resources in the community at large to meet the emergency needs of low-income individuals and families.

NOTE: This list is *illustrative* and not exhaustive of the fields of expertise which may be required of the T&TA provider.

(6) T&TA applicants must not only show evidence of successful experience and competence in carrying out the kinds of activities described above, they must also indicate how they will coordinate their activities with the CSA Regional office, the SEOO's, special support projects and national T&TA providers.

(7) T&TA applicants must review the proposals of the CFNP grantees for whom the T&TA is being proposed and design their work programs so as to most effectively meet the needs of these grantees.

(d) *Headquarters Training and Technical Assistance (T&TA) Projects and Research and Demonstration (R&D) Projects.* (1) Public and private nonprofit organizations or agencies which meet CSA's general eligibility criteria may apply for headquarters T&TA and R&D funds.

(2) Unlike regional T&TA projects, headquarters T&TA projects will focus on grantee needs that are common to a number of regions or require a national strategy. In addition headquarters T&TA projects may be required to address the needs of other projects administered directly from headquarters, e.g., migrant conduits.

(3) The objective of R&D projects is to develop new knowledge or demonstrate new hypotheses relevant to the solution of the problems of hunger and malnutrition among the poor. Activities proposed in applications for R&D funds should relate to activities described under the five program categories defined earlier in this subpart but should emphasize new and untried approaches to solving problems of hunger and malnutrition and potential solutions so as to have maximum impact on these problems nationwide.

(e) *Migrant Projects.* Farmworker-governed organizations which meet CSA's eligibility requirements may apply for funding under this category. Migrant conduits and other applicants proposing activities of a national or multi-regional scope will apply directly to CSA headquarters and will be exempt from the competitive process. Applicants proposing to operate local projects, and which meet CSA's eligiblity criteria (preferably farmworker-governed organizations), may apply as sub-contractors to the appropriate migrant conduit. Applicants applying as sub-contractors of the migrant conduits will follow the procedures outlined in § 1061.50–11 and § 1061.50–13 of this subpart. Their applications will be reviewed, rated and ranked by the migrant conduits on the basis of the criteria listed in Appendix D. The funding process will be competitive, with applicants with the highest scores being given funding preference.

NOTE: Applicants for local migrant projects will be required to achieve the minimum score of 65 points in order to be considered eligible for funding. However, CSA may waive this requirement where necessary in order to serve the most needy migrant populations.

(f) *Indian Projects.* Indian groups whose governance is controlled by the populations to be served are eligible to apply for Indian project funds. This includes Indian nations, tribes, bands, pueblos, or other organized groups or communities, including Alaskan Native villages as defined in the Alaskan Claims Settlement Act who are either indigenous to the United States or who otherwise have a special relationship to the United States, or a state, through treaty agreement, executive order, law, court order or administrative action of the Department of Interior, except as otherwise provided by Federal law. Urban Indian groups which meet the eligibility requirement stipulated in the first sentence of this subsection may apply for funds under this category. Applicants for Indian projects should submit their applications to the appropriate CSA regional office and should follow the application procedures outlined in § 1061.50–11 and § 1061.50–13 of this subpart. Their applications will be reviewed, rated and ranked according to the criteria in Appendix C and the funding process will be competitive, with funding preference being given to applicants with the highest scores. (Note: The CSA review panels for Indian projects will include Indians and Indian applicants will be required to achieve the minimum score of 65 points in order to be considered eligible for funding. However, CSA may waive this requirement where necessary in order to serve the most needy Indian populations.)

§ 1061.50–10 Funding.

(a) *Non-Federal Share.* The non-Federal share is waived for CFNP projects (see § 1068.20 of this chapter). However, grantees are expected to mobilize local and state resources throughout the life of a project.

(b) *Federal Share.* Federal share as matching funds granted under Section 222(a)(1) may be used to match USDA funds to support food stamp outreach projects, as well as nutrition projects for the elderly funded under Title XX of the Social Security Act as amended.

§ 1061.50–11 Application procedures.

(a)(1) *Required forms and documents.*

(i) SF 424: Federal Assistance (See § 1067.10 of this chapter). This form serves two purposes:

(A) It is used as a "notification of intent" to notify the A-95 Clearinghouses, sixty days in advance, of the applicant's intent to apply for a grant;

(B) It is the transmittal document used to convey the application to the clearinghouses and CSA.

NOTE: The Catalog of Federal Domestic number is 49.005.

(ii) OEO Form 395: Eligibility Documents (See Subpart 1067.40 of this chapter.

NOTE: All applicants are required to have on the file with CSA the following documents in order to establish eligibility to receive CSA funds. Current grantees should check to make certain these documents are up-to-date, making changes and resubmitting where necessary. New applicants should submit them either prior to or along with the submission of their formal applications.

(A) Articles of Incorporation (See Subpart 1067.80 of this chapter);

(B) By-laws or Rules of Organization (See Subpart 1067.80 of this chapter);

(C) Personnel Policies and Procedures (See § 1069.20 series of this chapter);

(D) Biographic Data on Key Staff (See § 1069.10 of this chapter);

(E) Statement of Accounting System (See § 1068.42 of this chapter);

(F) Current Bond (See Part 1050 Subpart C of this chapter)

(G) Participation of the Poor (See § 1060.1 of this chapter); include:

(*1*) List of Boards and Committees of Title II Programs (See Part 1062 Subpart J of this chapter);

(*2*) List of Policy Advisory Committee Members (LPA's Only—See § 1060.1 of this chapter);

(H) Applicant Certifications (CSA Form 301—New applicants only);

(I) Certification of Applicant's Attorney (OEO Form 393—New applicant's only—See § 1067.40 of this chapter).

(iii) Project Narrative (See § 1061.50–13(h), (i)).

(iv) OEO Form 419: Summary of Work Program and Budget (See § 1067.10 of this chapter).

(v) CAP Form 325 & 325a: Program Account Budget and Support Sheet (See OEO Instruction 6710–1).

(vi) CAP Form 84: Participant Characteristics Plan (See OEO Instruction 6710–1).

NOTE: Applicants are to list only those participants to be served by the proposed project and are reminded specifically that they are to list the number of elderly poor to be served.

(vii) OEO Form 394: Checkpoint Procedure for Coordination (*Optional*). Applicants are encouraged to use this form to indicate coordination linkages and agreements with local agencies. However, if the question of coordination is adequately addressed in the project narrative, the applicant need not include this form (See § 1067.10 of this chapter).

(viii) CSA Form 440: Program Progress Review Report (See Part 1050, Subpart I of this chapter).

NOTE: Although this form is not an application document, and not normally required with an application, CSA is requiring an updated Form 440 from applicants currently operating CFNP projects.

(2) *Additional forms required when delegating projects.*

(i) CAP Form 85: Administering Agency Funding Estimate (See OEO Instruction 6710-1).

(ii) CAP Form 87: Delegate Agency Basic Information (See OEE Instruction 6710-1).

(iii) CAP Form II: Assurance of Compliance with Civil Rights (See OEO Instruction 6710-1).

(iv) OEO Form 280: Agreement for Delegation of Activities (Self-explanatory). (See OEO Instruction 7570-1 Appendix C).

(b) *Clearinghouse Review* (A-95). Applicants are reminded that they must comply with the requirements of OMB circular A-95 (See § 1067.10 of this chapter), including the following:

(1) Applicants must, at least 60 days prior to the actual submission of their applications to CSA, notify the appropriate clearinghouses of their intent to apply. This is accomplished through the SF-424 which is synonymous with "notification of intent." In order to expedite clearinghouse review, applicants are encouraged to attach to the SF-424 a summary, not to exceed three pages, of the proposed project which includes a brief description of:

(i) The planning process and those involved in it; (ii) The problem to be addressed and the number of poor and age groups the project will serve; (iii) The goals and *major* activities to be carried out; (iv) How the project will be coordinated with other organizations involved in anti-hunger efforts; and (v) Resources the project expects to mobilize.

NOTE: Applicants are requested to submit an informational copy of their notifications of intent to the appropriate CSA Regional or headquarters office. CSA will send application packets containing the necessary application forms to all applicants who submit copies of their notifications of intent to CSA.

(2) Where the clearinghouse, in response to the notification of intent to apply, indicates that it wishes to review and comment on the application, applicants should forward applications to the clearinghouse as soon as possible. Applicants are required to submit the comments of the clearinghouse along with their applications to CSA.

(3) Applicants proposing statewide projects need only submit their notification of intent to the state clearinghouse for review. Such applicants should indicate in writing to the state clearinghouse that their proposed project is statewide and will not be submitted to area clearinghouses. Applicants serving as conduits (other than migrant conduits) must submit the applications of their delegates or sub-grantees to the appropriate area or state clearinghouses if those applications will be part of such conduits' application to CSA. Indian applicants who are part of a federally recognized tribal government or local subunit of such tribal governments are not required to submit their notifications of intent to area or state clearinghouses but are encouraged to coordinate with the appropriate clearinghouses. Migrant conduits must submit notifications of intent to their state and areawide clearinghouses. Local migrant organizations submitting applications to conduits as subcontractors or delegate agencies must submit their notifications of intent to appropriate state and areawide clearinghouses. Applicants may obtain clearinghouse addresses from the appropriate CSA Regional Office or, in the case of applicants for projects of national scope, CSA headquarters.

(4) Applicants proposing projects of a nationwide or miltistate scope need only submit their proposal to the state clearinghouse in the state where they are located if the activities proposed will not result in a significant impact. If a significant impact is anticipated in a given state, then a notification of intent, plus the application, if desired by the clearinghouse, must be submitted to the approporiate state clearinghouse. Applicants proposing activities of a national scope and which have targeted specific states for on-going or intensive efforts should assume that such activities will have a significant impact and therefore must notify the appropriate state clearinghouse of their intent to apply.

(5) Applicants applying for funds to provide training and technical assistance for staff development and management improvement and evaluation are exempted from A-95 clearinghouse procedures. (See § 1067.10-1 of this chapter.)

(c) *Where to Apply.* According to category of project send applications to:

(1) General Community: Appropriate CSA Regional Office.

(2) Special Support: Appropriate CSA Regional Office.

(3) Regional T&TA: Appropriate CSA Regional Office.

(4) Headquarters T&TA: CSA Headquarters.

(5) Headquarters R&D: CSA Headquarters.

(6) Migrants Conduits: CSA Headquarters.

(7) Migrant Subcontractors: Appropriate Migrant Conduit (See Appendix H).

(8) Indians: Appropriate CSA Regional Office.

§ 1061.50–12 Reporting Requirements.

Grantees will follow the financial and project reporting requirements outlined in Part 1050, Subparts H and I of this chapter, with the following exception: CSA is waiving the requirement as provided in Part 1050 Subpart I of this chapter that CAA's submit progress reports of CFNP projects along with the 440 submitted for Program Account 01. For this program 440s will be submitted semi-annually based on the effective date of the CFNP grant, to the appropriate CSA regional or headquarters office (see Appendix G).

NOTE: CSA is required by statute to report on the number of elderly poor being served by CSA funded projects. Grantees are, therefore, directed to indicate in their Program Progress Reports (440) the number of elderly poor being served by the project.

§ 1061.50–13 Current fiscal year application and review information.

(a) *Timetable for accepting applications.* The deadline for the submission of applications by various categories of applicants are listed below. Applications postmarked later than the dates indicated for a particular category will not be accepted.

(1) Applications for General Community, Special Support, and Indian projects will be accepted from the date of the publication of this rule through July 7 1980. Migrant subcontractors or delegate agencies should contact the appropriate Migrant Conduit to ascertain the deadline for submitting their applications.

(2) Applications from Headquarters and Regional T&TA applicants for one year programs, beginning January 1, 1981 and ending December 31, 1981, will be submitted to the appropriate CSA office not later than October 31, 1980.

(b) *Two-year Programming.* (1) Beginning in FY 80, CSA is instituting two-year programming for the Community Food and Nutrition Program, that is, CSA will approve two-year work programs for applicants rather than one-year programs except as noted below in paragraph (3). Thus, there will be *one competition* for the selection of applicants *every two years.*

(2) The reasons for instituting two-year programming are: (i) To reduce the amount of time and work spent by both the applicant and CSA in the grant application and review process, (ii) to allow both the grantee and CSA to focus more attention upon the substantive work to be accomplished during the grant period, and (iii) to assure at least a two-year period of continuity for projects that cannot be accomplished within a twelve-month period.

(3) The institution of two-year programming does not apply to Headquarters and Regional T&TA applicants, and does not preclude other applicants from applying for a one year grant if a particular set of proposed activities can be accomplished during a twelve-month period and further funding from CSA will not be required.

(4) The procedures for applying for funds to operate two-year projects are the same as those for one-year grants with the following exceptions: (i) The applicant need submit only *one* Form 419 for the two-year project, with the goals, objectives and activities for the entire two-year project clearly delineated both in the Form 419, and in the project narrative; (ii) In column 14 on the Form 419, entitled "Time Table Program Year Quarter", "quarter" should be interpreted as a 6-months period, so that the columns headed "1st" and "2nd" will cover the first twelve months of the project while the columns headed "3rd" and "4th" will cover the second twelve months; (iii) The applicant need attach only one budget form (Forms 325 and 325a) covering the first year of the project, and must enter in Section II of Form 325 the dollar amount needed for the second year of the project; (iv) Column 17 of the 419 must indicate the amount of funds required for each program category (program account); and (v) By June 30, 1981, the applicant must submit to the appropriate Regional office a new Form 325 and 325a for the second year of the project and, if there are any changes in the work program needed in the light of what happened in the first year of the project, an amended Form 419 should also be submitted.

(5) It is important to note that in approving applications for two-year programs CSA is neither making nor approving a two-year grant award since CSA cannot legaly commit funds which have not been appropriated. The funding process for two-year programs will be as follows: CSA will fund the first twelve months from current fiscal year funds. The second twelve month funding will be awarded in the subsequent fiscal year, if and only if, the following conditions are met: (i) Congress appropriates sufficient funds to permit the second year of funding, (ii) the grantee's performance during the first twelve months has been satisfactory, and (iii) there is no change in Agency priorities. If the above conditions are met, then the grantee will be awarded the second year of funds *without* having to submit another application.

(6) In order to determine whether a grantee's performance has been satisfactory CSA will conduct an assessment through an on-site visit or a telephone conference in conjunction with a review of the grantee's year-end program progress report (Form 440).

(7) In the event that appropriations for the CFNP are reduced in FY 81, CSA will make a determination as to how to effect reductions in grantees' budgets for the second year and notify the grantees in writing of its decision. In the event that appropriations for the CFNP are increased, CSA will determine how the increased allocation will be spent and will publish its plan for spending this increase in allocation in the FEDERAL REGISTER.

(c) *Consortium Applications.* In order to foster cooperation among grantees and to permit the maximum use of limited funds, CSA will permit applicants for FY 80, where it is geographically appropriate within a substate area, to submit a single application through a local Community Action Agency, or through any eligible non-profit organization consistent with the provisions of § 1061.50-9(a) (1) and (2) of this subpart. The applicant would then serve as the coordinator of CFNP activities within that geographical area. The permitting of consortiums among CFNP applicants merely formalizes a practice that already exists in some regions where such arrangements are known as "clusters".

(d) *Program Priorities.* The program priorities listed in § 1061.50-7 of this subpart are listed in priority order: (1) Access, (2) Self-Help, (3) Food Supply, (4) Crisis Relief and (5) Nutrition/Consumer Education (See Appendix A for further discussion of priorities).

(e) *Review Process.* The review process for applications, except Headquarters applicants, will be competitive, i.e., each application will be reviewed, rated, and ranked according to the criteria published in Appendixes B through F, with funding preference being given those applicants with the highest scores. Each applicant must score a minimum of 65 points in order to be funded. An applicant who scores more than the minimum points required *may* be funded, if funds are available, but funding is not guaranteed. The review process for all applications will be undertaken by the office to which applications are submitted as indicated in § 1061.50–11 of this subpart. Regional Offices and Migrant conduits' ratings, rankings and favorable or unfavorable funding decisions will be reviewed by CSA Headquarters before decisions become final. Applications from conduit organizations other than migrant conduits, must include copies of the applications from the sub-contractors or delegate agencies to which the conduit is redistributing CFNP funds.

(f) *Notification of Appeals.* (1) Each Regional Office will establish an appeals panel of not less than three members. Regional Offices will complete their funding decisions and mail notifications of results to all applicants within 30 working days of the deadline for submitting applications. The letter of notification will indicate whether the applicant was selected for funding and will give the applicant's score and rank standing and will include reviewers' rating sheets and comments. If an applicant is not funded and believes that the score assigned was unfair or that an incorrect decision regarding eligibility was made, the applicant may file a written appeal to the CSA Regional Director and may also request a hearing before the Regional Appeals Panel. All appeals and requests for a hearing must be presented in writing to the Appropriate Regional Director within ten working days of notification by the regional offices of the applicant's failure to qualify for funding. An applicant may only appeal a decision not to fund. He may not appeal the amount of funds awarded.

(2) The appeal should state succinctly why the applicant believes the decision of CSA to be incorrect or unfair. Where a meeting with the Appeals Panel is requested, the panel will promptly schedule such a meeting, hear the applicant's complaint, and provide any additional pertinent information as to why the applicant was not funded. The Appeals Panel will consider the arguments and evidence presented by the applicant and present its findings and recommendations to the Regional Director. Within 15 working days of the deadline for submitting appeals, the Regional Director will notify in writing all applicants of his/her decision. The decisions of the Regional Directors will be final.

(3) Migrant subcontractors or delegate agencies will follow the same procedure outlined above except that their appeals will be made to the appropriate Migrant Conduit's Executive Director, whose decision will be final. There will be no appeals process for CSA Headquarters applicants since they are not funded on a competitive basis.

(g) *CSA Form 419 and Project Narrative.* (1) All applicants for CFNP funds are required to submit a CSA Form 419 (Summary of Work Program and Budget). Since funds for most applicants will be awarded on a competitive basis, it is absolutely essential that applicants provide, through the Form 419 and project narrative, as complete and specific a picture as possible of *what they* propose to do and *how* they intend doing it. In preparing the narrative, applicants should refer to the discussions in the rating criteria in the following section.

NOTE: The requirement to conform both to the General Standards of Effectiveness and the Specific Standards of Effectiveness described in § 1061.50–6 of this subpart *must be met in order for an applicant to be considered eligible for funding.* Therefore, applicants must not only list in item 11 of CSA Form 419 the standards which are being met in each program category, *they must describe in the project narrative exactly how the standards will be addressed.* In other words, in addressing the General Standards of Effectiveness, the applicant must show how the project will (i) strengthen the community's planning and coordination capabilities, and/or (ii) improve service delivery systems, and/or (iii) make use of innovative approaches, and/or (iv) involve maximum feasible participation by the poor in the planning and implementation of the project, and/or (v) mobilize a broad range of resources, and/or (vi) hire the poor in carrying out the project's activities.

(2) In addressing the Specific Standards of Effectiveness applicants must list on the Form 419 the particular standard which is being met and describe in the project narrative the extent to which the project will result in (i) improvement in the nutritional status of the target population or (ii) reduction in hunger among the target population. Projects that do not meet a minimum of *three* of the general standards effectiveness and one of the specific standards *will not be considered eligible for funding. Applicants must identify in the project narrative their discussion of the standards of effectiveness with the heading: Standards of Effectiveness Addressed. Failure to comply with this requirement will result in the application's being rejected as ineligible.*

(h) *Rating Criteria.* In preparing the Form 419 and project narrative, applicants should keep in mind the seven criteria (discussed below) which will be used by CSA reviewing teams in rating and ranking applications.

(1) *Participation of the Poor.* Fundamental to all CSA-funded programs, including the CFNP Program, is the requirement that low-income residents be substantively involved in the planning, conduct, and evaluation of projects at the community level. The minimum requirements for the participation of the poor are spelled out in § 1060.1 of this chapter and all applicants are advised to review it carefully.

NOTE: Limited Purpose Agencies are reminded that they must have either a board of directors which is comprised of at least one-third representatives of the poor or a policy advisory committee, a majority of which are democratically selected representatives of the poor served by the project (See § 1062.200-4 of this chapter).

Although participation of the poor is an *eligibility requirement,* it is included in the rating criteria in order to highlight the emphasis that is being placed on participation of the poor in the CFNP and to enable CSA to make a judgement about the *quality* of an applicant's efforts to secure such participation. Thus, applicants will be rated on (i) the extent to which have involved the low-income residents of the areas to be served in the planning of the project, including the selection of goals and priorities; (ii) the ways in which the poor will be involved in the implementation of the project; and (iii) the ways in which the poor will be involved in the evaluation of the project.

(2) *Needs analysis.* The second criterion—the analysis of needs—refers to the initial step in the planning process which lies behind the project described in the Form 419 and project narrative. § 1067.40 of this chapter requires Title II grantees to develop and maintain planning documents which contain, among other things, an analysis of the particular needs the project is addressing. The needs analysis must describe the *nature* and *extent* of the problems of hunger and malnutrition among the poor in the community the project will serve. The analysis should indicate what *efforts are currently being undertaken* to meet those needs, what *gaps or short falls* there are in these efforts and the *extent to which* the needs or problems *remain unmet* or unsolved. The applicant should clearly identify, among the range of needs listed, the precise need(s) the proposed project will address. Appropriate statistics to document the need(s) should be supplied; for example, the number of persons participating in the food stamp program as compared with the number of eligible persons not participating, or the number of children in need of but not receiving school breakfasts, or the number of families which could benefit from a gardening project, or the number of persons in need of emergency food assistance. The needs analysis must indicate which of the problems described will be addressed and why these particular problems (priorities) were selected. If the applicant is addressing other problems and needs of low-income persons, the needs analysis should indicate the order of priority which the problem of hunger and malnutrition has among those needs and should include a description of the types and level of resources already committed to solving that problem.

Community Action Agencies should indicate the amount of local initiative funds, as well as other resources, which are currently being applied to anti-hunger activities.

(3) *Adequacy of work program and budget.* The third criterion—the adequacy of the work program and budget—refers to the project goals, activities, and budget described in the Form 419 and project narrative. The project goals (item 11 of Form 419) should be stated in *specific* and *measurable* terms and they should be *appropriately related to the needs* described in the needs analysis. They should reflect the *changes* or *results* which the project activities are expected to bring about. The activities should be listed in summary form on the Form 419 (item 13) and described in detail in the project narrative. The description should indicate not only *what* will be done but *how* it will be done, i.e., the *strategy* that will be pursued in achieving goals. The activities should be *appropriately related to the goals.* If an applicant is proposing to carry out activities in more than one program category, the categories would be listed on the Form 419 in priority order, and the *goals, activities and funds required for each category should be clearly delineated.* The applicant need only submit one budget (325 and 325a) for the entire proposal whether one or more program categories is included.

(4) *Anticipated Impact.* The statement of project goals should include a description of what the applicant intends to accomplish, i.e., what results or changes the applicant intends to bring about in relation to the problem to be solved. Thus the statement of goals is a statement of anticipated impact. The anticipated impact of the project should be stated in specific and measurable terms and should include the number of persons to be served, the extent to which their nutritional needs will be met and the extent to which unmet needs will remain after the project is completed. The applicant should also include a statement indicating the per/person cost of serving those for whom the project is intended and the dollar value of services or benefits derived.

(5) *Coordination.* Each applicant must indicate to what extent other organizations conducting anti-hunger activities were involved in the planning of the project, and the ways in which the project will be coordinated in the implementation phase with the activities of these organizations. CAA's must indicate how they intend to coordinate their activities with anti-hunger groups and anti-hunger groups must indicate how they intend to coordinate their activities with CAA's.

(6) *Catalytic Effect of Project on Institutions.* Catalytic activity which is aimed at institutions should attempt to bring about two results: *Institutional change* and *mobilization of resources.* The means of achieving these is *advocacy.* The applicant, therefore, should describe in detail how the project staff will, through advocacy for low-income persons seek to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive the benefits to which they are entitled. Advocacy of this sort may and should include enlisting the poor to speak on their own behalf in order to insure that their views are heard, their rights are observed, the benefits to which they are entitled are provided, and their needs are met. The applicant should also state how the project staff will, through advocacy for low-income persons, leverage dollars or in-kind contributions from other elements in the community in support of the project and what the overall end effect of the project itself will be in terms of leveraging dollars or services for low-income individuals.

(7) *Ability of Applicant to Perform.* Part 1050, Subpart I, of this chapter requires Title II grantees to submit a semi-annual and annual project progress review report (CSA Form 440). Since the ability of the applicants to carry out successfully their proposed work program is one of the important criteria, applicants who are currently operating (or have operated in the past) a CFNP project *must attach to the application a copy of the CFNP portion of the most recent Form 440, updating it where necessary.* CSA grantees who have never operated a CFNP project must attach to the ap-

plication that portion of their most recent Form 440 which relates to a project they have operated that is similar to CFNP projects. Applicants not previously funded by CSA should attach to the application a third-party or self-evaluation of a project they have been operating that is similar to CFNP projects, along with a brief statement summarizing their overall administrative ability and general performance record. All applicants currently operating CFNP projects are encouraged to conduct a third-party evaluation of their current CFNP project (or in the absence of such, a self-evaluation) and attach copies of these evaluations to their applications.

(i) *Training and Technical Assistance.* The applicant's need for training and technical assistance in carrying out the project should be carefully described in item 15 of the Form 419. It is presumed that most, if not all, projects will need some form of technical assistance. The training and technical assistance plans proposed by the regional T&TA providers will be based in part upon the statement of goals, activities, and T&TA needs expressed by applicants on their Form 419s. It is important, therefore, that applicants be precise and specific in defining and articulating their T&TA needs.

(j) *Program Accounts.* The following program account numbers for the various program categories should be entered in item 16 of Form 419:

12-Access.
13-Self-Help.
14-Food Supply.
15-Nutrition education.
16-Crisis relief.
17-Special Support.
29-Research.
39-Demonstration.
42-T&TA.
48-Evaluation.

[45 FR 33789, May 20, 1980, as amended at 45 FR 56348, Aug. 25, 1980]

APPENDIX A TO SUBPART 1061.50

I. PROGRAM PRIORITIES

(1) In continuing Access as the number one priority, CSA recognizes both accomplishments and continued need. The primary emphasis of the CFNP over the past two years, under the head of Access activities, has been to increase the participation of the poor in the various public feeding programs at the federal, state and local level. Partly as a result of that emphasis, a substantial momentum has developed among anti-hunger advocates and the various administering agencies which has, in fact, resulted in sizable increases in the number of poor participating in those programs and in significant improvements in program administration. Funding levels for the federally-funded programs have been increased and the statutes and regulations governing them have been considerably improved.

(2) Much has been done, yet much remains to be done. Forty percent (40%) of the nation's poor and near-poor who are eligible still do not participate in the Food Stamp Program; seventy-five percent (75%) do not participate in the School Breakfast Program; and eighty-five percent (85%) are still not reached by the WIC Program. These statistics are unacceptably high, and the unmet need is great with respect to some of the other federally-funded programs, e.g. the Summer Food Program. Therefore, unrelenting efforts must continue to assure that all of the poor who are eligible and who wish to participate in these programs are given an opportunity to do so. CFNP grantees need to advocate for the establishment of new and the expansion of existing child nutrition programs where the need exitsts (e.g., School Breakfast and WIC), and they need to advocate for greater participation by the elderly poor in programs that are designed to meet the nutritional needs of the elderly, such as congregate feeding programs sponsored by the Administration of Aging. In addition, grantees must continue to monitor these programs at the state and local level to assure that the new statutes and regulations are adhered to, that effective outreach efforts are undertaken, and that the programs are administered effectively, efficiently and fairly.

(3) Applicants are urged to increase and strengthen activities that promote the self-sufficiency of the poor. Self-Help activities contribute directly to self-sufficiency and it is for this reason we are again assigning this category of activity the highest priority after Access. There are other activities, however, that contribute indirectly to self-sufficiency. Therefore, CSA wishes not only to encourage applicants to design proposals that include Self-Help activities where such activities are appropriate and feasible, but to stress the importance for CFNP grantees to utilize every means in whatever activities they undertake, *in all program categories*, to achieve the goal of self-sufficiency for the poor, whether they contribute directly or indirectly to that goal.

(4) In the category of Access for example, buying food from poor farmers for the School Breakfast and School Lunch programs contributes directly to self-sufficiency. So does an arrangement which permits food stamp recipients to buy food directly from poor farmers with their food stamps, or having a non-profit organization run by and for the poor distribute food stamps. Also, in Access, expanding the School Breakfast and WIC programs contributes indirectly to self-sufficiency since, to the extent that one enables a child to get off to a healthy start in life and to acquire a solid education, he has helped to provide that child with the equipment necessary to become a self-sufficient adult. In working to expand and increase participation in the School Breakfast and WIC programs, grantees are also, happily, focusing on two of the federal programs where there is the greatest unmet need.

(5) Under the new category, Food Supply, whose aim is to stimulate the private sector, there are a variety of activities which contribute directly and indirectly to self-sufficiency. Hiring the poor to work in wholesale and retail outlets and in the manufacturing and distribution aspects of the industry obviously contributes directly. Initiatives by the food industry to make more nutritious food available to the poor at more reasonable prices contribute indirectly, as do advertising and educational programs sponsored by private industry to make the poor more nutritionally aware.

(6) With respect to Crisis Relief, the provision of emergency food assistance often is necessary "to tide over" a family or individual while they are between jobs. To the extent that such assistance helps to keep a person going until the new job or paycheck comes in, it is contributing directly to the achievement of the self-sufficiency of the individual. Further, there are opportunities for the poor to become directly involved in the provision of emergency food assistance either as paid workers or as volunteers until other work is available.

(7) In considering options for the provision of emergency food assistance, communities are urged to give consideration to the establishment of food pantries and emergency food box projects which draw upon a variety of community resources (including the food industry) for their continued support. Because of the extremely adverse impact upon the poor of continued high inflation and high energy costs, CSA recognizes the increased need for emergency food assistance, has given this category of activities a higher priority, and urges local communities to create mechanisms for the provision of such assistance.

(8) Under Nutrition Education, activities which improve "the ability of low-income individuals and families to understand the connection between diet and health, to obtain at the lowest prices nutritionally superior foods and to prepare and preserve these foods in ways that minimize the loss of nutrients" obviously contribute to self-sufficiency. CNFP grantees are urged to monitor existing nutrition/consumer education programs to make sure: (1) That they are targeted to meet the specific needs of the poor, (2) That the poor are involved in the planning of new efforts, and (3) That to the extent possible the poor are hired to conduct outreach and assist in conducting nutrition and consumer education activities.

(9) All CNFP grantees should seek to hire the poor wherever possible in the conduct of project activities, and they should advocate the hiring of the poor in all publicly-funded food programs and by the private sector in the manufacture, distribution and sale of foodstuffs. A suitable job is, after all, the primary and ultimate means of achieving self-sufficiency in our society.

(10) While CSA is again establishing national priorities, it is important to note that applicants may, without penalty, select activities and program categories that best meet the needs of the poor in the communities which they serve. However, all projects, in addition to containing activities that promote the *self-sufficiency of the poor*, will be expected to continue the priority of emphases established by last year's rule, i.e., they must be *catalytic*, contain a *strong advocacy thrust*, and mobilize significant *other resources*. Failure to include these elements may result in an applicant's inability to score high enough to be funded.

II. Further Clarification of the Key Terms: Catalytic Activity, Advocacy, Direct Service Delivery and Monitoring (See § 1061.50-2)

The CFNP policy makes explicit two assumptions: (1) That not all catalytic activity is advocacy and (2) that some forms of direct service delivery can be catalytic. These assumptions can be diagrammed as follows:

Activity aimed at individuals	Activity aimed at institutions
Catalytic	
Direct Service: One-on-one activity (for example, some types of out-reach activity) whose purpose is to deliver goods or services to low-income individuals and families in such a manner as to trigger a process that is carried forward by the recipient, either on his own or with the assistance of groups and agencies other than the CFNP project.	Advocacy: Activity whose purpose is to insure that the views of low-income individuals and families are heard, their rights observed, the benefits to which they are entitled are actually provided and their needs met to the extent possible, whether this is achieved by a change in a law, regulation, policy, procedure or attitude or by leveraging additional public or private resources.
Non-catalytic	
Direct Service: One-on-one activity (for example, some types of out-reach activity) whose sole effect is the delivery by a CFNP worker of goods or services to low-income individuals and families.	Advocacy: Activity which results in CFNP staff being co-opted into performing, without reimbursement, services which are properly the responsibility of another group or agency.

Direct Service as a Catalytic Activity

Although providing one-on-one service makes little sense in the context of advocacy and coalition-building at the state level and even less at the level of the national anti-hunger groups and T&TA providers, such service is important at the level at which community action agencies operate. A local CFNP project which completely severs the service link between its staff and low-income individuals, not only risks a loss of credibility in the community but is depriving itself of one of its richest resources, first-hand knowledge of the nutritional problems of those the CFNP is ultimately intended to benefit. In addition, the one-on-one relationship created through out-reach activity at the local level has two other consequences which are vital for the success of the CFNP: (1) By enhancing the opportunity to involve recipients of services in the planning and implementation of programs set up to serve them, it contributes to the achievement of the overall goal of Title II programs—self-sufficiency—and (2) it makes possible the kind of grass-roots support needed for really effective advocacy at the state and national levels.

However, as indicated earlier [in § 1061.50-4 (a) and (b) of this subpart], the same passage of the EOA which establishes the goal of self-sufficiency, points to *catalytic* activity as the principal means of achieving this goal. This should not be construed as ruling out one-on-one service. If the delivery of a direct service by a CFNP worker to a low-income individual produces a benefit which has a continuing and expanding effect on that individual and others, even after the reduction or termination of direct CFNP support, then the delivery of that service qualifies as a catalytic activity. Non-catalytic service delivery, on the other hand, should be kept to a minimum, be provided on a temporary or emergency basis only and be supported wherever possible from local initiative funds. The intent of the EOA is reinforced by a practical consideration: the very limited funding of the CFNP. The fact that the CFNP budget is less than 3/10ths of 1% of the total federal food outlay suggests not only that most of the direct service provided should be of the catalytic variety, but that there should be a very strong emphasis on that type of catalytic activity known as advocacy.

Advocacy as a Catalytic Activity

It can be inferred from the statment of the five purposes of Title II programs (see § 1061.50-6) that the two most important objectives of the CFNP are the mobilization of resources and institutional change. The techniques used to bring about these two results are what is meant in this rule by the term "advocacy". Because advocacy, unlike catalytic activity of the direct service variety, is aimed at institutions and the general public, it obviously has the potential for producing far greater dividends for the low-income population than direct service.

The intent of the rule is that an advocacy component be built into *each project* but not necessarily into each project activity. For example, a self-help project may include as one of its activities the provision of seeds and technical assistance to low-income gardeners. The catalytic potential of this one-on-one service could be greatly increased if the project were to include a specific plan to induce other public or private institutions to make land available and assume at least part of the burden of providing seeds and technical assistance.

It may be difficult and sometimes impossible to score successes in local advocacy activity. But the rule calls on all local project operators to make a *bona fide* effort in this direction. It is especially important, in this era of dwindling public funds, to engage in vigorous *private sector* advocacy. Grantees inexperienced in advocacy techniques should seek help from the CFNP's regional and national T&TA providers.

The following examples may help to further clarify what is meant by catalytic direct service, advocacy, etc., and how these different activities can be combined in one project:

1. *Under Access.*

a. *Direct Service.* Any one-on-one direct service activity in the Access category can be considered, for the purposes of this rule, to be catalytic. For example, an activity which is catalytic and therefore quite acceptable is searching out low-income persons eligible for food stamps, alerting them to their entitlements and referring them to the local certification office for additional counseling and enrollment in the Food Stamp program. Another example is representing an applicant for food stamps at a local or State-level hearing.

Some activities, however, are more catalytic than others, that is, they produce an even greater return for the dollars invested. For example, a CFNP project, instead of directly representing individuals at Food Stamp hearings, may help low-income individuals learn the techniques needed to enable them to speak to themselves at Food Stamp hearings and to organize and train others to do the same. The most catalytic of all is the advocacy approach.

b. *Advocacy*. Examples of advocacy in the access category are: (1) Working out arrangements with a grantee of the national Legal Services Corporation to provide one-on-one legal counseling and representation for food stamp recipients experiencing difficulties with welfare offices; (2) monitoring of local welfare offices to insure that they comply with USDA regulations so that clients obtain the benefits to which they are entitled; (3) organizing a corps of county volunteers to provide elderly food stamp recipients with support services, such as transportation to food stamp outlets and grocery stores; (4) disseminating information locally on the national School Breakfast Program and seeking to persuade local officials and school board members to institute breakfast programs in schools serving low-income communities.

2. *Under Self-Help*.

a. *Direct Service*. Any one-on-one direct service in the Self-Help category is catalytic. For example, the provision of seeds and T&TA to low-income gardeners not only stimulates them to pursue an activity which promotes self-sufficiency (the goal of all Title II programs), but the gardeners, by investing their own labor at no cost to the project, are able to produce and preserve food whose value far exceeds the cost of the seeds and T&TA. Nonetheless, a gardening project becomes catalytic in the full sense if, in addition to providing seeds and T&TA, it includes a strong advocacy component.

b. *Advocacy*. Examples of advocacy in the Self-Help category are: (1) Negotiating with USDA's Extension Service or other public or private agencies to provide seeds and ongoing T&TA for low-income gardeners; (2) persuading a local government to change its regulation governing the use of vacant land so as to make it available for family and community gardens; (3) negotiating with local governments to remove barriers, resulting from local ordinances or regulations, to the establishment of farmers' markets and food co-ops.

3. *Under Food Supply*.

a. *Direct Service*. Since most of the activities listed under Food Supply are aimed at the private sector, very few of them involves the provision of direct services to the poor. One exception is where a food bank operated by a grantee provides foodstuffs to organizations operating feeding programs for the poor. However, a food bank project can be truly catalytic by taking a small amount of grant funds and mobilizing considerably greater resources and services from the public and private sectors of the community it serves. Some food banks have managed to provide ten to fifteen dollars worth of food to the poor for every CFNP dollar invested.

b. *Advocacy*. Almost all of the activities under Food Supply are by definition advocacy activities, e.g., organizing consumer action to get food sales tax laws repealed; encouraging food retailers to join with city governments and community based groups to bring supermarkets back to inner cities; and enlisting the support of retailers for the establishment of consumer monitoring and advisory panels. Developing a broad base of community support for the establishment of a food bank and continued mobilization of resources and solicitation of foodstuffs from the food industry to support the bank are also examples of advocacy. While many of the activities under Food Supply result eventually in improved services to the poor, such as making available a variety of inexpensive, quality foods (in order to promote optimum nutrition among the poor), the activity required to bring that about, namely, encouraging industry to adopt more responsible packaging and advertising practices, is indeed an advocacy activity.

4. *Under Crisis Relief*.

a. *Direct Service*. Most direct service activity in the Crisis Relief category is non-catalytic, for example, issuing emergency food vouchers, paid for by CFNP funds, to a family in need.

b. *Advocacy*. Examples of advocacy in the Crisis Relief category are: (1) Spinning off a currently CAA operated food pantry or food box project to a community coalition that raises funds to carry out the projects independently of CAA subsidy; (2) negotiating with USDA, the Federal Disaster Assistance administration, church and civic groups and local government entities to establish a mechanism in the community that will insure prompt distribution of foodstuffs to low-income individuals in emergency situations; (3) monitoring the operation of a local food stamp program to insure that the new USDA regulation is followed which cuts food stamp issuance time for a destitute individual or family to the same day the application is filed (the so-called "same-day-service").

5. *Under Nutrition/Consumer Education.*

a. *Direct Service.* As in the case of "Access" and "Self-help" activities, it is hard to think of a direct service activity in the "Nutrition Education" category which does not have some catalytic effect. For example, there is surely some multiplier effect in the activity of teaching a group of low-income individuals how to compare foods and shop wisely, in terms of nutritional content or price or both. But given the fact that other agencies have been furnished Federal monies to carry out nutrition education activities, a more cost-effective expenditure of limited CFNP funds would be on advocacy activities relating to nutrition education.

b. *Advocacy.* Examples of advocacy in the Nutrition Education category are: (1) Working with USDA's Extension Service or with other appropriate state agencies to insure that federally-financed nutrition education programs are, to the extent provided for under the law, designed for and directed at the low-income population; (2) Organizing groups in the low-income community to monitor in local retail food outlets price increases that exceed Administration inflation guidelines.

III. MONITORING

The statutory authority for CSA's and CSA grantees' monitoring of other federally-administered programs is found in Title IX of the Economic Opportunity Act which states: "The Director shall, directly through grants or contracts, measure and evaluate the impact of all programs authorized by this Act and of poverty-related programs authorized by other Acts, in order to determine their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services * * *".

Since the USDA is the principal operator of federal food programs, the bulk of CFNP monitoring activities will be aimed at programs operated by USDA at the state and local level. Carol Tucker Foreman, Assistant Secretary for Food and Consumer Services, USDA, in commenting upon the FY 79 proposed CFNP regulations, recognized and supported this critically important role of CSA's CFNP grantees. Having stated her commitment to improve the operation of USDA's food programs she said:

"We need support and, I am not afraid to admit, pressure * * * we need the help and expertise of CFNP grantees. We can write the rules and publish guidelines, but we cannot peer into every community in this land to see how our programs reach people. We need to see how the programs function and receive guidance as to how they can be improved. *CFNP must see this function as its major responsibility.* There must be informed and aggressive actions state-wide and in communities across the country to *monitor* program implementation, to help governmental agencies do their jobs and, where necessary, insure that the law is enforced. Certainly we intend to improve our capacity to aid in this process, but most of this work must be undertaken locally where only CFNP, and the volunteer work of other civic organizations, can truly be effective." (emphases added)

Thus the monitoring role of CFNP grantees has not only been recognized by USDA, it has been strongly encouraged, and the letter of Ms. Foreman underscores once again its importance.

It should be emphasized that the type of monitoring described above is *not* the same as the monitoring and oversight functions that USDA and other federal agencies, by law, must *themselves* carry out to insure that programs they administer comply with relevant statutes and regulations, are managed soundly, and achieve the purposes for which they were instituted. Therefore, in carrying out this function, CFNP grantees should carefully avoid conveying the impression that they are supplanting or usurping the monitoring functions proper to these other agencies.

IV. OUTREACH

Grantees involved in access activities are urged to obtain a copy of USDA's Final Rule, dated November 6, 1979, implementing the outreach provisions of the Food Stamp Act of 1977 (Ref. 7 CFR Part 272). In its final rule, USDA distinguishes between two types of outreach as follows:

"'Informal outreach' is the conveying of information about the Program through such means as publications, telephone hotlines, films, media and face-to-face contacts. 'Non-informational outreach' is the providing of transportation to certification or issuance offices, or similar physical program support."

The USDA rule officially recognizes the contribution CSA has been making to the Food Stamp outreach effort in the past and assumes that there will be joint USDA-CSA outreach activity in the future, with USDA coordinating the overall program. Under the USDA rule, for example, while USDA will not reimburse State agencies for non-informational outreach where a CAA is doing such outreach, USDA may pay for such outreach where a CAA is not providing it. In addition, a State agency may be reimbursed for doing informational outreach in the same area a CAA may be doing it. This is simply a recognition of the fact that the combined USDA/CSA resources for outreach are generally insufficient to meet the total need.

Granted that CSA has a continuing role in the area of Food Stamp outreach, this does not mean that the CFNP should bear a major part of the outreach burden. For one thing, all CAA's whether or not they are recipients of CFNP funds, have a Food Stamp outreach responsibility. Secondly, CFNP funds are limited and should be applied primarily to advocacy activities directed at institutions rather than on direct services to individuals.

A partial solution to CSA's outreach dilemma is provided by USDA's assumption of a major part of the outreach responsibility *and in particular by the policy, newly reaffirmed in USDA's final rule on outreach, that State agencies may delegate Food Stamp outreach responsibilities, on a reimbursable basis, to CAA's and CFNP grantees.* There is an opportunity here for some very significant catalytic activity on the part of CFNP grantees and CAA's, namely, the leveraging, *by means of a contract with a State agency,* of USDA funds for outreach performed by CSA's grantees.

V. NATIONAL CONSUMER COOPERATIVE BANK

The National Consumer Cooperative Bank authorized by Congress in 1978 is required by law to make its "best efforts" to provide 35% of its loan money to low-income organizations including food co-ops. The Bank will publish its final regulations by the end of May, 1980. In the meantime, they have a brochure, available upon request, which explains application procedures and eligibility criteria. Applications are currently being accepted and will be processed on a *first come first served* basis. CFNP grantees and prospective applicants for food co-op projects are therefore urged to submit their applications to the Bank promptly. All CAA's are supposed to be on the Bank's mailing list. CAA's which are not yet on the list and other interested CFNP grantees or prospective applicants for CFNP funds for food co-op projects should contact the Bank at the following address for further information: National Consumer Cooperative Bank, Attn: Ms. Pru Pemberton, 2001 S Street, NW., Washington, DC 20009; Telephone: 424-2481.

In addition applicants may wish to contact the Cooperative Bank Monitoring Project whose principal purpose is to ensure full participation by eligible low-income organizations. The address of the Project is: Conference on Alternatives, State and Local Policies, Attn: Mr. Norman Davis, Co-op Bank Monitoring Project, 2000 Florida Avenue, NW., Washington, DC 20009; Telephone 202-387-6030.

VI. FISCAL YEAR 1980 ALLOCATIONS[1]

Region	Gen. comm.	Spec. sup.	T&TA	Indians
I	931,000	142,000	46,000	196,000
II	1,595,000	243,000	79,000	60,000
III	1,810,000	276,000	90,000	
IV	2,523,000	385,000	125,000	225,000
V	2,141,000	327,000	107,000	194,000
VI	1,849,000	282,000	92,000	525,000
VII	900,000	137,000	45,000	140,000
VIII	878,000	134,000	44,000	380,000
IX	1,390,000	212,000	69,000	700,000
X	1,063,000	162,000	53,000	480,000
Totals	$15,080,000	$2,300,000	$750,000	$2,900,000

[1] CSA reserves the right to make adjustments in these allocations in the event that a region or conduit is unable to expend its full allocations due to a lack of qualified applicants.

MIGRANT CONDUITS

Rural New York	$290,171
Del Marva ministries	203,708
Migrant and seasonal farmworkers association	417,400
Florida[1]	416,225
Minnesota migrant council	656,250
Colonias Del Valle	606,157
Campesinos Unidos	661,339
Idaho migrant council	498,750
	3,750,000

[1] Grantee (conduit) to be determined.

APPENDIX B TO SUBPART 1061.50—RATING CRITERIA—GENERAL COMMUNITY PROJECTS

	Points
1. Participation of the Poor (10 pts): Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project	
2. Analysis of Needs/Priorities (0–15 pts): Nature and extent of problem is adequately described and documented (0–8 pts)	

APPENDIX B TO SUBPART 1061.50—RATING CRITERIA—GENERAL COMMUNITY PROJECTS—Continued

	Points
Priorities selected represent the most serious needs (0–7 pts)	
3. Adequacy of Work Program and Budget (0–20 pts):	
Goals are appropriately related to need and are specific and measurable (0–5 pts)	
Activities are adequately described and appropriately related to goals (0–10 pts)	
Budget is appropriately related to activities and adequately documented (0–5 pts)	
4. Anticipated impact (0–10 pts):	
In relation to the problem to be solved and the resources committed to the project, the:	
Impact is minimal (0–3 pts)	
Impact is moderate (4–6 pts)	
Impact is substantial (7–10 pts)	
5. Coordination (0–10 pts):	
Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0–5 pts)	
Other institutions/organizations will be involved in the implementation of the project (0–5 pts)	
6. Catalytic Effect of Project on Institutions (ADVOCACY) (0–20 pts):	
A. Institutional Change (0–10 pts):	
Grantee, through *advocacy* for low-income persons, seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled	
B. Mobilization of Community Resources (0–10 pts):	
Grantee, through *advocacy* for low-income persons leverages dollars or in-kind contributions from other elements in the community	
0–25% of total budget (0–3 pts)	
25–50% of total budget (4–6 pts)	
50% and up (7–10 pts)	
7. Ability of Applicant to Perform (0–15 pts):	
Assessment of past CFNP or other relevant projects (including written self-or third-party evaluations, progress reports, or CSA on-site assessments) (0–10 pts)	
Assessment of applicant's overall administrative ability and general track record (0–5 pts)	
Total points (possible: 100)	

APPENDIX C TO SUBPART 1061.50—RATING CRITERIA—INDIAN PROJECTS

	Points
1. Participation of the Poor (10 pts):	
Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project	
2. Analysis of Needs/Priorities (0–15 pts):	
Nature and extent of problem is adequately described and documented (0–8 pts)	
Priorities selected represent the most serious needs (0–7 pts)	
3. Adequacy of Work Program and Budget (0–20 pts):	
Goals are appropriately related to need and are specific and measurable (0–5 pts)	
Activities are adequately described and appropriately related to goals (0–10 pts)	
Budget is appropriately related to activities and adequately documented (0–5 pts)	
4. Anticipated impact (0–10 pts):	
In relation to the problem to be solved and the resources committed to the project, the:	
Impact is minimal (0–3 pts)	
Impact is moderate (4–6 pts)	
Impact is substantial (7–10 pts)	
5. Coordination (0–10 pts):	
Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0–5 pts)	
Other institutions/organizations will be involved in the implementation of the project (0–5 pts)	
6. Catalytic Effect of Project on Institutions (ADVOCACY) (0–20 pts):	
A. Institutional Change (0–15 pts):	
Grantee, through *advocacy* for low-income persons seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled	
B. Mobilization of Community Resources (0–5 pts):	
Grantee, through *advocacy* for low-income persons leverages dollars or in-kind contributions from other elements in the community	
0–25% of total budget (0–5 pts)	
25% and up (6–10 pts)	
7. Ability of Applicant to Perform (0–15 pts):	
Assessment of past CFNP or other relevant projects (including written self or third-party evaluations, progress reports, or CSA on-site assessments) (0–10 pts)	
Assessment of applicant's overall administrative ability and general track record (0–5 pts)	
Total points (possible: 100)	

APPENDIX D TO SUBPART 1061.50—RATING CRITERIA—MIGRANT PROJECTS

	Points
1. Participation of the Poor (10 pts): Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project	
2. Analysis of Needs/Priorities (0–10 pts): Nature and extent of problem is adequately described and documented (0–5 pts) Priorities selected represent the most serious needs (0–5 pts)	
3. Adequacy of Work Program and Budget (0–20 pts): Goals are appropriately related to need and are specific and measurable (0–5 pts) Activities are adequately described and appropriately related to goals (0–10 pts) Budget is appropriately related to activities and adequately documented (0–5 pts)	
4. Anticipated impact (0–10 pts): In relation to the problem to be solved and the resources committed to the project, the: Impact is minimal (0–3 pts) Impact is moderate (4–6 pts) Impact is substantial (7–10 pts)	
5. Coordination (0–10 pts): Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0–5 pts) Other institutions/organizations will be involved in the implementation of the project (0–5 pts)	
6. Catalytic Effect of Project on Institutions (ADVOCACY) (0–25 pts): A. Institutional Change (0–15 pts): Grantee, through *advocacy* for low-income persons seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled	
B. Mobilization of Community Resources (0–10 pts): Grantee, through *advocacy* for low-income persons leverages dollars or in-kind contributions from other elements in the community 0–25% of total budget (0–5 pts) 25% and up (6–10 pts)	
7. Ability of Applicant to Perform (0–15 pts): Assessment of past CFNP or other relevant projects (including written self or third-party evaluations, progress reports, or CSA on-site assessments) (0–10 pts) Assessment of applicant's overall administrative ability and general track record (0–5 pts)	
Total points (possible: 100)	

APPENDIX E TO SUBPART 1061.50—RATING CRITERIA—SPECIAL SUPPORT PROJECTS

	Points
1. Participation of the Poor (10 pts): Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project	
2. Analysis of Needs/Priorities (0–10 pts): Nature and extent of problem is adequately described and documented (0–5 pts) Priorities selected represent the most serious needs (0–5 pts)	
3. Adequacy of Work Program and Budget (0–20 pts): Goals are appropriately related to need and are specific and measurable (0–5 pts) Activities are adequately described and appropriately related to goals (0–10 pts) Budget is appropriately related to activities and adequately documented (0–5 pts)	
4. Anticipated impact (0–10 pts): In relation to the problem to be solved and the resources committed to the project, the: Impact is minimal (0–3 pts) Impact is moderate (4–6 pts) Impact is substantial (7–10 pts)	
5. Coordination (0–10 pts): Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0–5 pts) Other institutions/organizations will be involved in the implementation of the project (0–5 pts)	
6. Catalytic Effect of Project on Institutions (ADVOCACY) (0–25 pts): A. Institutional Change (0–15 pts): Grantee, through *advocacy* for low-income persons seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled	
B. Mobilization of Community Resources (0–10 pts): Grantee, through *advocacy* for low-income persons leverages dollars or in-kind contributions from other elements in the community 0–25% of total budget (0–5 pts) 25% and up (6–10 pts)	
7. Ability of Applicant to Perform (0–15 pts): Assessment of past CFNP or other relevant projects (including written self or third-party evaluations, progress reports, or CSA on-site assessments) (0–10 pts) Assessment of applicant's overall administrative ability and general track record (0–5 pts)	
Total points (possible: 100)	

Appendix F to Subpart 1061.50—Regional T&TA Projects

	Points
1. Applicant has Skills/Abilities to Perform Adequately (0–30 pts):	
Applicant's past experience (0–10 pts):	
Quality of Staff:	
Knowledge of Food and Nutrition Field (including other Federal food programs) (0–10 pts)	
2. Proposal is Responsive to CSA Policy Priorities (0–25 pts):	
Applicant demonstrates an understanding of an adequate plan to assist CFNP grantees in moving from a service delivery to a catalytic role by engaging in advocacy to effect:	
Institutional change (0–15 pts)	
Mobilization of resources (0–10 pts)	
3. Proposal is Responsive to CFNP Grantee Needs for T&TA in Five Program Categories (0–25 pts):	
Plan is adequate to meet grantee needs (0–15 pts)	
Plan is appropriately related to the activities in the five categories (0–10 pts)	
4. Proposal is Responsive to CFNP Grantee Needs for T&TA in Program Management (0–10 pts):	
Applicant proposes an appropriate and adequate plan to assist grantees to improve their ability to:	
Assess needs	
Set goals and priorities	
Evaluate results	
5. Proposal includes a Plan to Coordinate T&TA Activities with Other Appropriate Entities (0–5 pts)	
6. Proposal includes a Plan to Evaluate Results of Applicant's Efforts (0–5 pts)	
Total points (possible: 100)	

Appendix G to Subpart 1061.50—Regional Offices

Region I

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Community Services Administration, John F. Kennedy Federal Building, Room 432, Boston, Massachusetts 02203
CFNP Coordinator: Ms. Jean F. McFague, Phone: (617) 223-4022

Region II

Serving: New Jersey, New York, Puerto Rico, Virgin Islands
Community Services Administration, 26 Federal Plaza, 32d Floor, New York, New York 10007
CFNP Coordinator: Ms. Saundra Hamilton, Phone: (212) 264-1946

Region III

Serving: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
Community Services Administration, Old U.S. Court House, Post Office Box 160, Philadelphia, Pennsylvania 19105
CFNP Coordinator: Ms. Norma Clarkson, Phone: (215) 597-1145

Region IV

Serving: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Community Services Administration, 101 Marietta Street, N.W., Room 2604, Atlanta, Georgia 30323
CFNP Coordinator: Mr. Sylvester Lindsey, Jr., Phone: (404) 221-2799

Region V

Serving: Illinois, Michigan, Minnesota, Ohio, Wisconsin
Community Services Administration, 300 South Wacher Drive, 25th Floor, Chicago, Illinois 60606
CFNP Coordinator: Ms. Elizabeth Newsome, Phone: (312) 353-1814

Region VI

Serving: Arkansas, Louisiana, New Mexico, Oklahoma, Texas
Community Services Administration, 1200 Maine Street, Dallas, Texas 75202
CFNP Coordinator: Mr. Shannon Doss, Phone: (214) 767-6249

Region VII

Serving: Iowa, Kansas, Missouri, Nebraska
Community Services Administration, 911 Walnut Street, Kansas City, Missouri 64106
CFNP Coordinator: Mr. Isaiah Celestine, Phone: (816) 374-2171

Region VIII

Serving: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Community Services Administration, 333 West Colfax Avenue, Tremont Center Building, Denver, Colorado 80204
CFNP Coordinator: Mr. Willard O'Berry, Phone: (303) 837-3211

Region IX

Serving: Arizona, California, Hawaii, Nevada, Trust Territories
Community Services Administration, 450 Golden Gate Avenue, Post Office Box 36008, San Francisco, California 94102

CFNP Coordinator: Mr. Darnell E. White, Phone: (415) 556-7617

REGION X

Serving: Alaska, Idaho, Oregon, Washington
Community Services Administration, 1321 Second Avenue, Seattle, Washington, 98101
CFNP Coordinator: Ms. Alberta Adams, Phone: (206) 442-7194

APPENDIX H TO SUBPART 1061.50—MIGRANT CONDUITS

MINNESOTA MIGRANT COUNCIL

Serving: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota
Post Office Box 1231, St. Cloud, Minnesota 56301
CFNP Coordinator: Mr. Rick Echola, Phone: (612) 253-7010

FLORIDA FARMWORKER'S COUNCIL

Serving: Florida
1975 East Sunrise Boulevard, Suite 850, Fort Lauderdale, Florida 33304
CFNP Coordinator: Ms. Anita McGruder, Phone: (305) 763-5252

MIGRANT AND SEASONAL FARMWORKERS ASSOCIATION

Serving: Alabama, Mississippi, Georgia, Louisiana, Tennessee, South Carolina, North Carolina, Kentucky
Post Office Box 33315, 3929 Western Boulevard, Raleigh, North Carolina 27606
CFNP Coordinator: Ms. Marian Tucker, Phone: (919) 851-7611

RURAL NEW YORK

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York
339 East Avenue, Suite 305, Rochester, New York 14604
CFNP Coordinator: Mr. Jefferey Lewis, Phone: (716) 546-7180

CAMPESINOS UNIDOS

Serving: Arizona, California, Nevada
Post Office Box 203, Brawley, California 92227
CFNP Coordinator: Ms. Toni Cornejo, Phone: (714) 344-4500

COLONIAS DEL VALLE

Serving: Oklahoma, Arkansas, Texas, New Mexico
Post Office Box 907, San Juan, Texas 78759
CFNP Coordinator: Mr. Hector de Leon, Phone: (512) 781-9795

IDAHO MIGRANT COUNCIL

Serving: Colorado, Washington, Wyoming, Montana, Utah, Idaho, Oregon
7155 Capitol Boulevard, Suite 406, Boise, Idaho 83706
CFNP Coordinator: Mr. Sam Byrd

DELMARVA RURAL MINISTRIES

Serving: Delaware, Maryland, Pennsylania, Virginia, West Virginia
Blue Hen Mall, Dover, Delaware 19901
CFNP Coordinator: Ms. Susan Canning, Phone: (302) 678-2000

Subpart 1061.51—Funding Requirements for Fiscal Year 1981 Crisis Intervention Program

SOURCE: 45 FR 73890, Nov. 6, 1980, unless otherwise noted.

§ 1061.51-1 Applicability.

This subpart is applicable to grants made under section 222(a)(5) of the Economic Opportunity Act 1964, as amended, for Energy Crisis Intervention activities if the assistance is administered by the Community Services Administration.

§ 1061.51-2 References.

(a) Section 222(a)(5) of the Economic Opportunity Act of 1964, as amended.

(b) 45 CFR Subpart 1067.40, Applying for a Grant Under Title II, Sections 221, 222(a) and 231 of the Economic Opportunity Act, of 1964, as amended.

(c) 45 CFR Subpart 1050.50, Cost Sharing and Matching.

(d) 45 CFR Subpart 1068.20, Non-Federal Share Requirements for Title II, Sections 221, 222(a) and 231 Programs.

(e) 45 CFR Subpart 1067.4, Standards for Evaluating the Effectiveness of CSA Administered Programs and Projects.

(f) 45 CFR Subpart 1067.7, Due Process Rights For Applicants Denied Benefits Under CSA Funded Programs.

(g) 45 CFR Subpart 1050.80, Monitoring and Reporting Performance.

(h) 45 CFR Subpart 1050.70, Financial Reporting Requirement.

(i) 45 CFR Subpart 1050.160, Procurement Standards.

(j) 45 CFR Part 260, Department of Health and Human Services Social Security Administration, Low Income Energy Assistance Program.

§ 1061.51-3 Definitions.

(a) "Household" means any individual or group of individuals who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent.

(b) "Elderly" means persons who are sixty years of age or older.

(c) "Handicapped" means those individuals who meet the definition of "handicapped" individuals as defined in section 7(6) of the Rehabilitation Act of 1973, as amended, that is "any person who (1) has a physical or mental impairment which substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment" or who are under a disability as defined in section 1614(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Act of 1970, as amended, or who are receiving benefits under Chapter 11 or 15 of Title 38, United States Code.

(d) "SSI Benefits" means Supplemental Security Income benefits under title XVI of the Social Security Act, including mandatory and optional payments that the Department of Health and Human Services administers for a State under Subpart T of 20 CFR Part 416 to supplement Federal benefits, but excluding benefits:

(1) Paid under 20 CFR 416.231 because the beneficiary is living in a Medicaid institution and Medicaid is paying more than 50 percent of the cost of care;

(2) Reduced by one-third under 20 CFR 216.1125(b) because the beneficiary is living in another person's household and is receiving both support and maintenance (food and shelter) from that person and is not paying his pro rata share of food and shelter expenses; or

(3) Paid to a beneficiary who is:

(i) A child for SSI purposes under 20 CFR 416.1050; and

(ii) Living with a parent or with the spouse of a parent.

(e) "AFDC" means Aid to Families with Dependent Children payments made under title IV-A of the Social Security Act, but not including Foster Care payments under § 233.110 or Emergency Assistance payments to needy families with children under § 233.100.

(f) "Seasonal Farmworker" shall mean a farmworker who during the preceding twelve months has been employed less than 250 days in field or food processing work and who is not a migrant farmworker. This does not include supervisors of other farmworkers.

(g) "Migrant Farmworker" shall mean a person who left home (accepted place of residence) temporarily to do hired field or food processing work which requires travel such that the worker is unable to return home within the same day.

(h) "Indian" means any individual who is a recognized member of a federal or state recognized Indian tribe, Alaskan Native Village or corporation.

(i) "Tribe" or "Indian Tribe" means a distinct community of Indians that exercises powers of self-government and is so recognized by Federal and/or State statute.

§ 1061.51-4 Background.

(a) $87.5 million has been authorized to the Director of the Community Services Administration for carrying out energy crisis related activities under section 222(a)(5) of the Economic Opportunity Act of 1964.

(b) $3 million of these funds will be set-aside for purposes of outreach activities designed to assure that eligible households with elderly members are aware of the assistance under LIEAP and ECIP.

(c) Eighty percent (80%) of the remaining funds received by CSA will be allocated among the States to eligible applicants as defined in this rule.

(d) The remaining twenty percent (20%) shall be used by CSA to provide such things as training and technical assistance to grantees; to evaluate the program; to support its administration of the program; and to provide grants for special emphasis projects relating to energy and the needs of the poor.

§ 1061.51-5 Purpose.

This rule details the procedures CSA will utilize to implement the FY 1981 Energy Crisis Intervention Program, and outlines the policies and funding criteria which will govern the expenditure of funds allocated under this program.

§ 1061.51-6 Policy.

(a) In keeping with Congressional intent, the CSA Energy Crisis Intervention Program (ECIP) is designed to *complement* HHS's Low Income Energy Assistance Program (LIEAP). The goals of the ECIP are therefore (1) to assure that the LIEAP and other energy-related support networks (e.g. DOE's weatherization projects, public/private funded energy assistance programs etc.) are responsive to the energy needs of the poor; (2) to provide only those crisis intervention activities not readily available through the LIEAP and other support networks; (3) to undertake activities which will lessen the impact of the high cost of energy on the poor; and (4) to develop a local planning capability involving community resources to deal with both short and long range energy issues affecting the poor in the specific community.

(b) This program is not an income transfer program. This program does not entitle any person or household to a certain amount or form of assistance. This program is not to be considered as an alternative to those households which have access to direct assistance through other networks and public and private entities. Although CSA has not established any particular priorities, grantees are encouraged to continue to emphasize program services for the elderly and the handicapped.

§ 1061.51-7 Who can apply for funds?

(a) All Community Action Agencies (CAA's) are eligible to apply for ECIP funds to undertake crisis intervention activities in their service areas.

(b) CSA Regional Directors will identify existing CSA grantees to undertake crisis intervention activities in those areas of a state not covered by an existing CAA.

(c) Indian Tribes are also eligible to apply for funds to undertake crisis intervention activities for their service areas. If a CSA Regional Director identifies a significant population of Indians that is not self-governed but which would not be able to receive services outlined in this rule due to geographical isolation or other significant factors, he/she may request a waiver from Headquarters to fund this Indian group directly. Waivers will be reviewed on a case by case basis.

(d) The Migrant and Seasonal Farmworker organizations designated as CSA conduits (see Appendix A to Subpart 1061.51 for names and addresses of organizations) are eligible to apply for funds to undertake crisis intervention activities for Migrant and Seasonal Farmworkers.

(e) Grants made in regard to the remaining 20% [§ 1061.51-4(d)] will be to public and private non-profit organizations and agencies which meet CSA's general eligibility criteria.

§ 1061.51-8 What can these funds be used for?

(a) All work programs proposing to undertake energy crisis intervention activities, including emphasis on delivery of the activities to the elderly and handicapped, must include, at a minimum, activities (1) through (4):

(1) *Access.* Grantees must undertake activities to insure that all poor and near poor households are provided access to federal, state or other energy crisis assistance programs. Such activities might include, but are not limited, to the representation of the interests of the poor with utility/fuel vendors, with the program operators of the Low Income Energy Assistance Program (LIEAP), and with the program operators of the Department of Energy's weatherization program.

(2) *Community Mobilization Activities.* Mobilization and organization of community resources to respond to crisis needs within the community.

(i) Mobilization of Organizations—Such activities might include, but are not limited to coordination of religious, social service and other community based organizations to become aware and involved in the energy issues affecting the poor and soliciting their help in ameliorating their effects.

(ii) Mobilization of Goods and Services—Such activities might include but are not limited to securing goods, services, and temporary relocation centers from community based merchants, religious, social service and other organizations to respond to the energy needs of the poor during individual emergencies and periods of crises.

(3) *Direct services.* The provision of direct services in the form of goods or services are to be provided only when these direct services are not available from other sources. These services might include, but are not limited to, providing blankets, warm clothing, temporary shelter, energy-related repairs to housing such as patching a roof or replacing a broken window, furnace repairs and space heaters. Grantees are also permitted to make payments of utility/fuel bills as a one-time form of crisis assistance to a household and only after negotiations with utility/fuel vendors and other energy crisis assistance operators (e.g., LIEAP local program operators and other federal, state and local agencies) have failed to resolve the household's crisis and the determination that sufficient, timely and appropriate assistance is not available from any other source. Grantees must document in the applicant's file, the actions taken on behalf of the applicant before authorizing the payment of a utility/fuel bill. In undertaking this activity, grantees must assure that reconnection of utility service or delivery of fuel actually occurs. Funds under this program shall not be used to weatherize houses.

(4) *Community Planning and Education.* Such as, but not limited to comprehensive energy-related planning to benefit the low-income populace of the area, the dissemination of energy conservation information, the conduct of energy conservation education programs and the provision of information on existing energy programs in the community (e.g., information and referral to the LIEAP).

(5) *Alternate Energy Sources.* Constitutes the replacement of or the substantial supplement to a household's source of energy. This activity is being allowed since grantees may find, in some instances, that the best means of solving an individual household's energy problem is to utilize an alternate energy source.

§ 1061.51–9 Who can be served by this program?

(a) *Income Eligibility.* Notwithstanding the provision of 45 CFR 1060.2(a) found at 45 FR 51561 (8/4/80), for purposes of this program, eligibility shall be limited to households whose incomes total no more than 125% of the CSA Income Poverty Guidelines or whose major income earner receives SSI or AFDC payments. (See definition for SSI and AFDC at § 1061.51–3 (d) and (e)). No grantee may change these income eligibility guidelines. (See Appendix B to Subpart 1061.51 for CSA Income Poverty Guidelines.)

(b) *Program Eligibility.* Assistance under this program is to be provided only to households not having access to direct assistance of the same type through any other supportive networks, such as the Low-Income Energy Assistance Program (LIEAP), welfare, or other federally funded programs or who have exhausted such assistance, and the household is experiencing or is in danger of experiencing a life threatening or health-related emergency situation and that sufficient, timely and appropriate assistance is not available from any other source.

(c) *Certification of Income Eligibility Required of Grantees.* Proof of income eligibility shall be required of each applicant. The period for determining eligibility will not be more than 12 months or less than 90 days preceding the request for assistance. The determination of what constitutes income shall be based on the CSA Income Poverty Guidelines. In limited instances when proof of income is unavailable, an applicant must sign a declaration of income eligibility in order to receive assistance. In such cases, the local program operator must make a reasonable number of ongoing checks (no less than 10%) to verify income eligibility.

(d) *Income Disregard.* Benefits made available under this program shall not be considered as income or resources of such household (of any member thereof) for any purposes under any federal or state law, including any law relating to taxation, public assistance or welfare program.

§ 1061.51-10 Level of assistance.

(a) The sum of all forms of direct and alternate energy sources assistance under this program made to and/or on behalf of any eligible household under this program may not exceed $400.

(1) The provision of direct services may not exceed a total of $200 for any eligible household.

(2) No alternate energy source can exceed a total sum of $400.

§ 1061.51-11 How to obtain funds.

(a) Applications for funds under this program, except for applications submitted by Migrant & Seasonal Farmworker Conduits, must be submitted to the appropriate CSA Regional Office. (See Appendix C to Subpart 1061.51.) Applications by the Migrant & Seasonal Farmworker Conduits must be submitted to the Headquarters Migrant & Seasonal Farmworker Office.

(b) Applications should be received within thirty (30) days from the date of publication of these regulations.

(c) *Contents of application.* (1) The following forms are required as part of the application package:

(i) CSA Form 419, Summary of Work Programs and Budget. This form must address all of the activities outlined under § 1061.51-8 which the applicant is going to undertake. Each activity should be addressed separately with a breakdown for the level of funding to support each activity.

(ii) CAP Form 25, Program Account Budget;

(iii) CAP Form 25a, Program Account Budget Support Sheet; and

(iv) SF 424, Federal Assistance.

(2) When delegating part or all of the work program, the applicant must also submit the following:

(i) CAP Form 85, Administering Agency Funding Estimate;

(ii) CAP Form 87, Delegate Agency Basic Information; and

(iii) CAP Form 11, Assurance of Compliance with Civil Rights.

(d) *Clearinghouse review procedures.* (1) OMB has granted a procedural variation of OMB Circular No. A-95 clearinghouse review procedures for the Energy Crisis Intervention Program for FY '81. Due to the emergency nature of the Program, suggested modifications to an application resulting from clearinghouse comments are to be addressed by a grantee or CSA on a post grant approval basis this fiscal year.

(i) Prospective grantees/applicants must submit a full application, including a summary of work programs, to appropriate state and areawide clearinghouses at the time of submission to CSA. Early contact with the clearinghouses prior to submittal of the application is encouraged to determine if the clearinghouses can be of assistance in identifying areas or individuals in need, current assistance being made available and community, areawide, or state networks available that might assist in responding to energy crisis needs.

(ii) State and areawide clearinghouses shall have a total of 60 days from receipt of an application to conduct notifications and reviews. They will be of assistance to the applicant and to CSA if their reviews address the policy considerations identified in § 1061.51-6 as well as appropriate subject matter of comments and recommendations in item 5, Part I, Attachment A of OMB Circular No. A-95, particularly regarding the coordination of energy planning which relates to the needs of the poor. Clearinghouse comments should be sent to the appropriate CSA Regional Office with a copy to the applicant.

CSA reserves the right to modify a grantee's program if it deems documented clearinghouse comments warrant such action. It is expected that grantees will act in good faith in resolving any issues identified by clearinghouses. In instances where issues cannot be resolved, they should be referred to the CSA Regional Office by the clearinghouse or the grantee.

§ 1061.51-12 Project requirements.

(a) *Project Advisory Committee.* (1) Each applicant shall establish a Project Advisory Committee (PAC). However, if the applicant has an existing PAC that is properly constituted, this PAC will satisfy this requirement.

(2) The role of the PAC should include, but not be limited to, the following activities:

(i) Participate in the development of an ongoing review of the proposed work program;

(ii) Recommend to the Grantee board agency policy for the approval or disapproval of requests for the installation of alternate energy sources. The criteria to be used in establishing the policy should include the determination that the installation of the alternate energy source will:

(A) Lessen the impact of the high cost of energy on the household;

(B) Have a significant impact on the household's energy usage pattern; and

(C) Lessen the potential for future energy assistance subsidies.

(iii) Address the energy issues affecting the community as a whole and how they impact upon the poor;

(iv) Make recommendations to the Grantee board on the routine operation of the grantee's crisis intervention program; and

(v) Participate in the development of applications for any future crisis intervention activities.

(3) Membership on the PAC should include at least 51% poor persons as well as representatives of the local governments. The remaining membership should be made up of other energy related resource agencies and organizations, such as energy advocacy organizations, representatives of local public utilities, aging organizations, and local fuel vendors.

(b) *Crisis Intervention Program Coordinator.* A grantee must have at least one energy crisis intervention program (ECIP) coordinator who will be responsible for assuring the implementation of the approved work program. ECIP program funds and other funds from CSA programs may be used to support this position. The ECIP coordinator is expected to mobilize the resources available from other Federal, State and local programs, and cooperate fully. The coordinator is not to assume programmatic or administrative responsibility for other programs.

(c) Non-Federal share requirements. Since this is a program with crisis intervention activities, a matching share is not required. However, grantees are encouraged to mobilize additional resources to supplement and support this program.

(d) *Maintenance of effort.* Assistance provided with funds made available under this program shall be in addition to, and not in substitution for, services previously provided without federal assistance.

(e) *Procedures on denial of assistance.* Grantees are subject to the provisions of 45 CFR 1067.7 which requires them to have written procedures for the review of the partial or complete denial of assistance to any household or individual.

§ 1061.51-13 Post funding requirements.

(a) *Financial reporting.* Grantees shall follow normal procedures for submission of the SF-269 and SF-272 outlined in 45 CFR Part 1050, Subpart H.

(b) *Project progress review reports.* Grantees shall also follow normal procedures for the submission of the Project Progress Review Report (CSA Form 440) outlined in 45 CFR Part 1050, Subpart I.

(c) *Audit requirement.* The program including its contracted-out components will be audited at the time of the grantee's regularly scheduled CSA audit.

(d) *Procurement.* The procurement standards outlined in 45 CFR 1050.160 are applicable to this program.

(e) *Administrative costs.* The grantee may expend up to 10% of the total grant for administrative costs except the ECIP Coordinator's salary may be charged against the ECIP program, other CSA programs and non-CSA funds.

(f) *Prohibition against transfer to another grant.* Funds unobligated at the termination of the grant cannot be transferred by the grantee of record to another grant.

§ 1061.51-14 Termination of program.

No funds under this program may be obligated after September 30, 1981. For this program, "obligation" shall mean certification for assistance by the program operator of a specific eligible household.

APPENDIX A TO Subpart 1061.51—NAMES AND ADDRESSES OF MIGRANT CONDUITS

Migrant Conduits

New England Farmworkers Council (Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 6 Frost Street, Springfield, Massachusetts 01105. ECIP Coordinator: Jane Malone, Phone: (413) 781-2145

Rural New York (Serving: New Jersey, New York), 339 East Avenue, Suite 305, Rochester, New York 14604. ECIP Coordinator: Kaven Carney, Phone: (716) 546-7180

Farmworkers Corporation of New Jersey (Serving: Delaware, Maryland, Pennsylvania, Virginia, West Virginia), 1400 West Landes Avenue, Vineland, New Jersey 08360. ECIP Coordinator: Tom Paque, Phone: (609) 691-7101

Mississippi Delta Housing Development Corporation (Serving: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Scuth Carolina, Tennessee, Louisiana), 432 Highway 82 East, P.O. Box 847 Indianola, Mississippi 28751. ECIP Coordinator: Alvin Brown, Phone: (601) 887-4852

Minnesota Migrant Council (Serving: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, South Dakota), P.O. Box 1231, St. Cloud, Minnesota 56301. ECIP Coordinator: Irving (Rich) Echola, Phone: (612) 253-7010

Coloneas Del Valle (Serving: Arkansas, New Mexico, Oklahoma, Texas), P.O. Box 907, San Juan, Texas 78759. ECIP Coordinator: Tony Barco, Phone: (512) 781-9795

ORO Development Corporation (Serving: Iowa, Kansas, Missouri, Nebraska), 1208 Kansas Avenue, Kansas City, Kansas 66105. ECIP Coordinator: Marco Marcano, Phone: (913) 342-2121

North Dakota Migrant Council (Serving: Colorado, Montana, North Dakota, Utah, Wyoming), P.O. Box Drawer X, Grand Forks, North Dakota 58201. ECIP Coordinator: Jerry Nagel, Phone: (701) 746-6494

Campesinos Unidos (Serving: Arizona, California, Nevada), P.O. Box 203, Brawley, California 92227. ECIP Coordinator: Tony Cornejo, Phone: (714) 344-4500

Idaho Migrant Council (Serving: Idaho, Oregon, Washington), 7155 Capitol Boulevard, Suite 406, Boise, Idaho 83706. ECIP Coordinator: Roger deLeon, Phone: (208) 345-9761

APPENDIX B TO SUBPART 1061.51—CSA POVERTY INCOME GUIDELINES

125 PERCENT OF THE POVERTY-INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit	Nonfarm family	Farm family
1	$4,738	$4,063
2	6,263	5,351
3	7,788	6,639
4	9,313	7,927
5	10,838	9,125
6	12,363	10,503

For family units with more than 6 members, add $1,525 for each additional member in a nonfarm family and $1,288 for each additional member in a farm family.

125 PERCENT OF THE POVERTY GUIDELINES FOR ALASKA

Size of family unit	Nonfarm family	Farm family
1	$5,950	$5,113
2	7,850	6,713
3	9,750	8,313
4	11,650	9,913
5	13,550	11,513
6	15,450	13,113

For family units with more than 6 members, add $1,900 for each additional member in a nonfarm family and $1,600 for each additional member in a farm family.

125 PERCENT OF THE POVERTY GUIDELINES FOR HAWAII

Size of family unit	Nonfarm family	Farm family
1	$5,463	$4,700
2	7,213	7,650
3	8,963	7,650
4	10,713	9,125
5	12,463	10,600
6	14,213	12,075

For family units with more than 6 members, add $1,750 for each additional member in a nonfarm family and $1,475 for each additional member in a farm family.

APPENDIX C TO SUBPART 1061.51—CSA REGIONAL OFFICE ADDRESSES

Mr. Ivan Ashley, Regional Director, CSA, Region I, E-400, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Phone: (817) 223-4080/FTS-8-223-4080. Boston: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Ms. Josephine P. Nieves, Regional Director, CSA, Region II, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Phone: (212) 364-1900/FTS-8-364-1900. New York: New Jersey, New York, Puerto Rico, Virgin Islands.

Dr. W. Astor Kirk, Regional Director, CSA, Region III, Old U.S. Courthouse, P.O. Box 160, 9th and Market Streets, Philadelphia, Pennsylvania 19105, Phone: (215) 597-1139/FTS-8-597-1139. Philadelphia: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Mr. William "Sonny" Walker, Regional Director, CSA, Region IV, 101 Marietta Street NW., Atlanta, Georgia 30303, Phone: (404) 221-2717/FTS-8-242-2717. Atlanta: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Mr. Glenwood Johnson, Regional Director, CSA, Region V, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606. Phone: (312) 252-5562/FTS-8-353—5562. Chicago: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Mr. Ben T. Haney, Regional Director, CSA, Region VI, 1200 Main Street, Dallas, Texas 75202, Phone: (214) 767-6126/FTS-8-729-6126. Dallas: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Mr. Wayne Thomas, Regional Director, CSA, Region VII, 911 Walmut Street, Kansas City, Missouri 64106, Phone: (816) 374-3761/FTS-8-758-3761. Kansas City: Iowa, Kansas, Missouri, Nebraska.

Mr. David Vanderburgh, Regional Director, CSA, Region VIII, 1961 Stout Street, Federal Building, Denver, Colorado 80294, Phone: (303) 837-4767/FTS-8-327-4767. Denver: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Mr. Alphonse Rodriquez, Regional Director, CSA, Region IX, 450 Golden Gate Avenue, Box 36008, San Francisco, California 94102, Phone: (415) 556-5400/FTS-8-556-5400. San Francisco: Arizona, California, Hawaii, Nevada, Trust Territories.

Mr. N. Dean Morgan, Regional Director, CSA, Region X, 1321 Second Avenue, Seattle, Washington 98101, Phone: (206) 442-4910/FTS-8-399-4910. Seattle: Alaska, Idaho, Oregon, Washington.

APPENDIX D TO SUBPART 1061.51—CSA NATIONAL FARMWORKERS DESK ADDRESS

Office of Farmworkers Programs, Attn: Mr. Eduardo Gutierrez, 1200 19th Street, NW., Washington, DC 20506, Phone: (202) 254-5400.

Subpart 1061.70—EneN(ECAP)

grants funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended, if administered by the Community Services Administration and to grants awarded by the Department of Health, Education, and Welfare to supplement ECAP grants made by the Community Services Administration.

[44 FR 76524, Dec. 27, 1979]

§ 1061.70-3 Policy.

(a) The primary intent of the program is to make funds available to states to enable Governors to respond to energy-related crises affecting poor and near poor households, which are caused by the high cost of energy and an anticipated severe winter.

(b) This one-time CSA-funded program does not entitle any household to a certain amount and/or form of assistance.

§ 1061.70-4 Who can apply for funds.

(a) Governors of each State, Puerto Rico and the Virgin Islands, and the Mayor of the District of Columbia may apply for funds under this program. (Note: All references in this document to "Governor" include the Mayor of the District of Columbia.)

(b) The funds will be distributed by CSA among the States and the District of Columbia according to a formula based on climate, fuel, and low-income population factors. If additional funds for this program become available, CSA may revise the distribution formula if conditions so warrant.

(c) To make a request, the Governor will submit a State Funding Plan to the CSA Regional Office serving his/her state. (See Appendix A to Subpart 1061.70). This will begin the formal application process.

(d) For further information regarding the application process see § 1061.70-11.

§ 1061.70-5 Administration of the program at the State level.

The Governor may choose any agency to serve as the grantee of record for this program, which meets the following criteria:

(a) Has proven experience in administering, monitoring, or operating programs for the poor;

(b) Will be able to implement the program and provide services in a timely manner throughout the state;

(c) Has a sound fiscal system and proven acceptability of its audits; and

(d) Will be able to comply with CSA's program and financial reporting requirements.

Where there are either administrative or legislative impediments that would prevent an agency at the State level from implementing the delivery of services in a timely manner, CSA will work with the Governor to develop an alternate plan which could include the option of designating more than one grantee for the state.

§ 1061.70-6 Local administering agency(ies).

The Governor also has the flexibility to choose the local administering agency(ies), such as community action agencies, aging offices and welfare offices. [Note: This does not preclude using the single state grantee as a deliverer.] However, in making the determination regarding the local operator(s), the Governor must assure that the operator(s) has:

(a) Experience in operating programs that serve the poor;

(b) The ability to carry out, or arrange for the outreach activities outlined in § 1061.70-7; and

(c) An adequate accounting system with appropriate fiscal controls.

§ 1061.70-7 How a local program is operated.

(a) *Serving Clients*—(1) *Reaching Potential Clients.* (i) The local administering agency is required to provide assistance to those households that do not have access to other supportive service networks but are income eligible for this program as well as to those who do have such access.

(ii) To carry out this mandate effectively, local delivery systems must notify, inform, and contact persons, including those individuals receiving unemployment compensation, potentially eligible for this program through, for example, the use of outreach workers, community groups, decentralized intake and certification systems, mass mailings, radio and T.V. spots, use of community newspapers, church bulletins, etc. In the State Funding Plan, the Governor must describe how outreach services will be provided to potential clients eligible for services. Expenses for these activities are to be included as administrative costs.

(2) Serving the elderly. On all grants made by CSA highest priority should be placed on serving the elderly. Therefore, local program operators should offer special services. Suggested activities include:

(i) Intake and certification by mail;

(ii) Scheduled appointments;

(iii) Transportation;

(iv) Use of senior citizen centers for provision of services; and

(v) Intake and certification in residences for persons unable to leave their residences due to infirmity or fear of victimization.

In the State Funding Plan, the Governor must describe how priority will be given to serving the elderly.

(3) *Serving renters.* This program is also intended to serve renters who are experiencing an energy related crisis. Renters who pay for their fuel indirectly as well as directly are eligible for assistance through ECAP. In the State Funding Plan, the Governor must indicate how renters will be served.

(4) *Heating fuel costs priority.* Priority will be given to those households experiencing significant increases in heating fuel costs over the last year.

In establishing such priority grantees should take into consideration the extent to which increases in rent are cause by increases in heating fuel costs.

(5) *Serving American Indians.* This program is also intended to serve American Indians who are not provided service through the special set-aside program as provided for in § 1061.70-11(a). State Funding Plans should indicate how such services will be provided.

(b) *Limitations on payments.* The sum of all assistance under this program made to and/or on behalf of any household shall not exceed the actual amount needed to ameliorate the households energy related problem or $400 whichever is less, unless a Governor elects to set assistance limits at a higher or lower level and/or provide for varying the maximum assistance level. If the Governor elects to make such a change he/she must provide in the State Funding Plan a justification including the specific criteria used as the basis for changing or varying the limits of assistance level within the state, such as climate, fuel and low-income population. While energy allowances, such as payments to SSI or AFDC recipients under the HEW Energy Assistance Program, received by a household may not be considered as income for purposes of determining income eligibility, any allowances received shall be taken into consideration in determining the assistance to be provided. The total amount of the energy allowances and/or assistance under this program shall not exceed the amount needed to ameliorate the household energy-problem or the maximum level of assistance in the state, whichever is lower.

(c) *Appeal by household which has been denied assistance.* (1) The grantee of record will ensure that each program operator will make known to all applicants procedures for review of the partial or complete denial of assistance under the program to any household. If the agency has an existing process which includes the elements listed below its continued use will satisfy the requirements of this policy.

(2) The state-designed procedures are to be applicable to partial or complete denials of requests for assistance for specific, tangible benefits to low-income households, e.g. utility payments, in-kind assistance, etc. for which the grantee of record currently is receiving CSA funds. The procedures will not apply to such activities as community organization, information and referral, etc.

(3) For purposes of this policy we will consider that there has been a denial of assistance when the benefits or services and/or funds currently are available, the local program operator has the authority to provide or disburse them, and the applicant falls within or believes that he/she can prove that he/she falls within the income eligibility and established program guidelines.

(4) CSA will provide a model form for States and local program operators to use in designing their intake/application form. CSA will notify the public in the FEDERAL REGISTER as soon as possible about this model form.

(5) In addition operators will develop procedures for reviewing denials of assistance which will include:

(i) Provisions for notifying the applicant in writing of the reasons for denial of assistance, that he/she may request a review of the denial and may submit additional information (in writing or orally) which the applicant believes would warrant a favorable determination;

(ii) Provisions for reviewing the denial of an application for assistance in a timely manner if such is requested by the applicant. This should include the specific assignment of responsibility to a senior level official other than the person making the initial determination;

(iii) Provisions for notifying the applicant in writing of the agency's final decision; and

(iv) The methods the agency will employ to publicize the existence of the appeal process.

(6) If the population served by the local program operator includes a sizable non-English speaking group, procedures, written materials, and publicity shall be made available in that language.

(7) A written description of the above required procedures shall be maintained on file by the local program operator and shall be available for public inspection.

(8) All documents relating to specific denials of assistance and action(s) taken will be maintained in the agency's files for the length of time required by CSA policy on "Retention and Custodial Requirement for Records." These records will be available for review by CSA officials upon request.

[44 FR 58876, Oct. 11, 1979, as amended at 44 FR 76524, Dec. 27, 1979; 45 FR 8303, Feb. 7, 1980]

§ 1061.70-8 What these funds can be used for.

Funds made available under this program must be used to provide assistance to eligible households to offset the high cost of household energy. Only the following types of assistance can be provided with these funds:

(a) Payments to vendors and suppliers of fuel, goods, and other services. Where an eligible household has paid its fuel bills, level of assistance equal to those bills should be provided in forms of assistance as described in paragraphs (b), (c), and (d) of this section.

(b) The establishment of lines of credits with fuel/utility vendors for the benefit of eligible households. The Governors may provide limitations on the use of lines of credits such as: limiting the line of credit to the elderly and the handicapped only, establishing a specific duration on a future credit to the elderly and varying the maximum level not to exceed the state approved maximum. The Governor must describe in the State Funding Plan how futures credits will be used in that particular state.

(c) Direct money assistance not to exceed $50 for the duration of the program to eligible households in those cases where a household is without resources to pay for other necessities as a result of paying utility/fuel bills, or as a means of implementing activities allowable under paragraph (d) of this section. Such payments shall be made by check only and not with coin or currency.

(d) Where necessary to prevent hardship or danger to health, the provision of immediate assistance in the form of goods or services such as emergency fuel deliveries, warm clothing, blankets, temporary shelter, emergency repairs to housing such as patching a roof or replacing a broken window, food, medicines or other supportive services such as rent. Funds under this program shall not be used to weatherize homes.

[44 FR 58876, Oct. 11, 1979, as amended at 44 FR 76525, Dec. 27, 1979]

§ 1061.70-9 Who is eligible to participate in this program.

(a) *Income eligibility.* Households with incomes at or below 125% of the CSA Poverty Guidelines and households whose heads receive SSI shall be eligible for assistance under this program. No state may change these income eligibility guidelines. Receipt of energy allowances shall not preclude eligibility under the Energy Crisis Assistance Program nor shall energy allowances be considered as income in determining income eligibility.

(b) *Program eligibility.* The Governor may specify certain program eligibility criteria by defining what constitutes an energy-related crisis in that particular state. Where a Governor wants to establish such eligibility criteria, he/she must provide an explanation and justification in the State Funding Plan for the eligibility criteria selected as well as a description of the procedures to be used in determining the program eligibility. The Governor may not require proof of unpaid fuel bills or notices of termination of utility service as criteria for eligibility under this program. The Governor also has the option to use income eligibility criteria as the sole eligibility criteria. Energy allowances shall be taken into consideration in determining program eligibility as indicated § 1061.70-7 (b) of this subpart.

(c) *Income Disregard.* Payments made under this program are not to be considered as income or resources for purposes of determining eligibility or benefits under any income maintenance program including, but not limited to public assistance, veterans benefits, food stamps, or Supplemental Security Income.

(d) *Determination of Income Eligibility Required of Grantees.* Proof of income eligibility is required. The period for determining eligibility will be not more than 12 months nor less than the 90 day period preceding the request for assistance. When proof of eligibility is unavailable, an applicant must sign a declaration of income eligibility. In such cases, the local program operator must make a reasonable number of spot checks to verify income eligibility.

[44 FR 58876, Oct. 11, 1979, as amended at 44 FR 76525, Dec. 27, 1979; 45 FR 8303, Feb. 7, 1980]

§ 1061.70-10 Termination of program.

No funds under this program may be obligated after June 30, 1980. For this program "obligation" shall mean certification for assistance by the program operator of a specific eligible household.

[44 FR 76525, Dec. 27, 1979]

§ 1061.70-11 How a Governor requests funds.

(a) Applications for funds under this program will be for statewide coverage. CSA will establish set-asides to serve Native Americans and farmworker groups.

(b) Within 15 calendar days of the effective date of this subpart, the Governor will submit a State Funding Plan to the appropriate CSA Regional Office with all the information required in § 1061.70-16. The State Funding Plan must provide a timetable indicating when services will be provided at the local level.

(c) CSA requested from OMB a complete waiver of the clearinghouse review procedures for the FY 80 Energy Crisis Assistance Program. OMB has granted a waiver under the following conditions transmitted in a letter dated August 29, 1979:

(1) The Governor's State Funding Plan will be subject to modified procedures of Part III of A-95. To the fullest practicable degree, the State agency responsible for development of the plan will involve the State clearinghouse in the development phase. Where such early coordination is not possible, the plan will be sent to the State clearinghouse not later than simultaneously with the submission of the plan to CSA;

(2) The State clearinghouse will determine the degree to which areawide clearinghouses should be involved in the review process and a normal 45 day review period will be afforded, on an *after the fact* basis;

(3) CSA's approval of the State Funding Plan will be conditional, in that the State plan may be subject to possible subsequent revision to accommodate any appropriate recommendations for its modification as provided by clearinghouses in the A-95 review process. The State operating agency will be instructed to make every effort to accommodate such recommendations and will provide appropriate clearinghouses with a statement as to its final judgment on each recommendation. As a result of this requirement CSA must require that any revisions made to the State Funding Plan be submitted to the appropriate CSA Regional Office for approval;

(4) CSA will provide State and appropriate areawide clearinghouses, via Standard Form 424, with an information copy of the "block" grant award to the State agency receiving the funds;

(5) In addition the State agency will provide, for each "sub-state" project grant award, information to the State and appropriate areawide clearinghouses as to the amount of monies awarded, to whom, and the purpose of each award. For these sub-state award notifications the use of Standard Form 424 is encouraged but is not mandatory.

(d) If a state fails to submit a State Funding Plan within 15 calendar days of the effective date of these regulations or if a submitted plan is not acceptable for approval, CSA may develop and implement a plan for the state.

§ 1061.70-12 General funding policies.

(a) *Matching Share.* A matching share is not required for this program.

However, states and local program operators are encouraged to mobilize additional resources to supplement and support this program.

(b) *Maintenance of Effort.* Resources for similar services scheduled to be provided this heating season under state and local authorities shall not be reduced because of this program nor shall this program be used as a substitute for such services. The Director of CSA may make exceptions only in those situations where a strict application of this requirement would result in unnecessary hardship or be inconsistent with the purposes of the Energy Crisis Assistance Program.

(c) *Administrative Costs.* The grantee of record may expend up to 10% of the total state grant for administrative and program support costs. Where the grantee has contracted out performance of all or part of the work program, such as outreach, grantee must provide a reasonable portion of these administrative funds to those program operators to enable them to administer the program.

(d) *Overexpenditures.* If the grantee of record incurs expenditures in excess of the total amount of the approved grant, the amount of the overexpenditure must be absorbed by the grantee of record.

(e) *Procurement.* In accordance with OMB Circulars A-110 and A-102 all proposed sole source contracts where only one bid or proposal is received in which the aggregate expenditure is expected to exceed $5,000 must receive prior approval by the appropriate CSA Regional Office.

§ 1061.70-13 Post-funding requirements.

(a) *Audit.* The grantee of record will not be required to have a separate audit of this program. The program including its contracted-out components will be audited at the time of the grantee of record's regularly scheduled audit. Five copies of the audit shall be submitted by the auditor to the appropriate CSA Regional Auditor concurrent with submission to the grantee of record.

(b) *Project Reporting.* The grantee of record is required to submit a Project Progress Review Report, CSA Form 440 on a quarterly basis to cover activities performed in this program. Grantees will also submit bi-weekly, until January 30, 1980 the following information in addition to the other reporting requirements: Total number of households assisted, total number of individuals assisted, total number of elderly-headed households assisted, total dollars obligated for heating/fuel bills, total dollars obligated for other purposes.

(c) *Financial Reporting.* The grantee of record must submit a separate Standard Form 269, Financial Status Report, and a Standard Form 272, Federal Cash Transactions Report, covering activities for this program on a quarterly basis with a final report due 90 days after the end of the program. The grantee of record shall follow these procedures for submission of the Standard Form 269 and the Standard Form 272: One copy of each to the appropriate CSA Regional Office, one copy of each to Grants Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street, NW., Washington, DC 20506, and one copy of each to Energy Crisis Assistance Task Force, 2000 K Street, NW., Suite 350, Washington, DC 20006.

(d) *Evaluation.* In the event that CSA undertakes a national evaluation of this program, the cooperation of the grantee of record, the local program operators, and that of participating utility/fuel vendors will be requested.

(e) *Prohibition against transfer to another grant.* Funds unobligated at the termination of the grant cannot be transferred by the grantee of record to another grant.

[44 FR 58876, Oct 11, 1979; 45 FR 8303, Feb. 7, 1980]

§ 1061.70-14 CSA application review and approval process.

(a) CSA Regional Directors are delegated the authority for final approval of grants under this program.

(b) Based on a uniform review process, Regional Directors will determine the adequacy of State Funding Plans.

(c) Once a plan has been approved by the Regional Director, Regional Offices will expedite the processing and forward the Statement of CSA Grant (CSA Form 314) to the grantee of record chosen by the Governor. Upon receiving the CSA Form 314, the grantee of record must sign it and return it to the CSA Regional Office.

(d) A state may amend its State Funding Plan only with the prior approval of the appropriate CSA Regional Director.

(e) When a state deviates from its approved state plan, without CSA approval, upon investigation, CSA will take appropriate action.

§ 1061.70-15 Coordination with utility/fuel vendors.

The Governor must ensure that in each case where payment is certified that:

(a) Reconnection of utilities and/or delivery of fuel is made upon certification for payment;

(b) For any remaining balances, the customer is offered a deferred payment arrangement or a level payment plan;

(c) A reconnection charge is paid only where such a charge was company practice prior to September 1, 1979; and

(d) No security deposit is required to be paid except where such a deposit was required by state law or explicit state regulations prior to September 1, 1979 and, where required by law or regulation is included in a deferred payment arrangement.

§ 1061.70-16 State Funding Plans.

The Governor will submit a State Funding Plan to the appropriate CSA Regional Office. The State Funding Plan will include the following:

(a) A letter from the Governor waiving the 30-day comment period and a request for a specific amount of funds.

(b) The following elements as described in this subpart:

(1) State Administering Agency.
(2) Local Administering Agency(ies).
(3) Timetable for Implementation.
(4) Outreach Activities.
(5) Elderly Priority.
(6) Renters.
(7) Program Guidelines.
(8) Appeals Process.

(c) Information on the following:

(1) A plan for monitoring to ensure immediate investigation, and, if warranted, redress in cases of poor administration of the program, faulty and/or inadequate eligibility certification, duplication and fraud.

(2) A summary of administrative costs and the activities to be performed.

(3) A list of the areas to be served by the program, the distribution of funds by area, and the specific factors used in making the allocation.

(4) A plan for providing management and fiscal technical assistance to the local administering agencies.

APPENDIX A TO SUBPART 1061.70—CSA REGIONAL OFFICE ADDRESSES

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Mr. John C. Finley, Acting Regional Director, CSA Region II, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Phone: (212) 264-1900/FTS-8-264-1900, New York: New Jersey, New York, Puerto Rico, Virgin Islands.

Dr. W. Astor Kirk, Regional Director, CSA Region III, Old U.S. Courthouse, P.O. Box 160, 9th and Market Streets, Philadelphia, Pennsylvania 19105, Phone: (215) 597-1139/FTS-8-597-1139, Philadelphia: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Mr. William "Sonny" Walker, Regional Director, CSA Region IV, 101 Marietta Street NW., Atlanta, Georgia 30303, Phone: (404) 221-2717/FTS-8-242-2717, Atlanta: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Mr. Glenwood Johnson, Regional Director, CSA Region V, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, Phone: (312) 353-5562/FTS-8-353-5562, Chicago: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Mr. Ben T. Haney, Regional Director, CSA Region VI, 1200 Main Street, Dallas, Texas 75202, Phone: (214) 767-6126/FTS-8-729-6126, Dallas: Arkansas, Louisana, New Mexico, Oklahoma, Texas.

Mr. Wayne Thomas, Regional Director, CSA Region VII, 911 Walnut Street, Kansas City, Missouri 64106, Phone: (816) 374-3761/FTS-8-758-3761, Kansas City: Iowa, Kansas, Missouri, Nebraska.

Mr. David Vanderburgh, Regional Director, CSA Region VIII, 1961 Stout Street, Federal Building, Denver, Colorado 80294, Phone: (303) 837-4767/FTS-8-327-4767, Denver: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Mr. Alphonse Rodriguez, Regional Director, CSA Region IX, 450 Golden Gate Avenue, Box 36008, San Francisco, California 94102, Phone: (415) 556-5400/FTS-8-556-5400, San Francisco: Arizona, California, Hawaii, Nevada, Trust Territories.

Mr. N. Dean Morgan, Regional Director, CSA Region X, 1321 Second Avenue, Seattle, Washington 98101, Phone: (206) 442-4910/FTS-8-399-4910, Seattle: Alaska, Idaho, Oregon, Washington.

APPENDIX B TO SUBPART 1061.70—COMMUNITY SERVICES ADMINISTRATION

125% OF POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit	Non-farm family	Farm family
1	$4,250	$3,638
2	5,625	4,800
3	7,000	5,963
4	8,375	7,125
5	9,750	8,288
6	11,125	9,450

For family units with more than 6 members, add $1,375 for each additional member in a non-farm family and $1,163 for each additional member in a farm family.

POVERTY GUIDELINES FOR ALASKA

Size of family unit	Non-farm family	Farm family
1	$5,338	$4,562
2	7,050	6,013
3	8,763	7,463
4	10,475	8,913
5	12,188	10,363
6	13,900	11,813

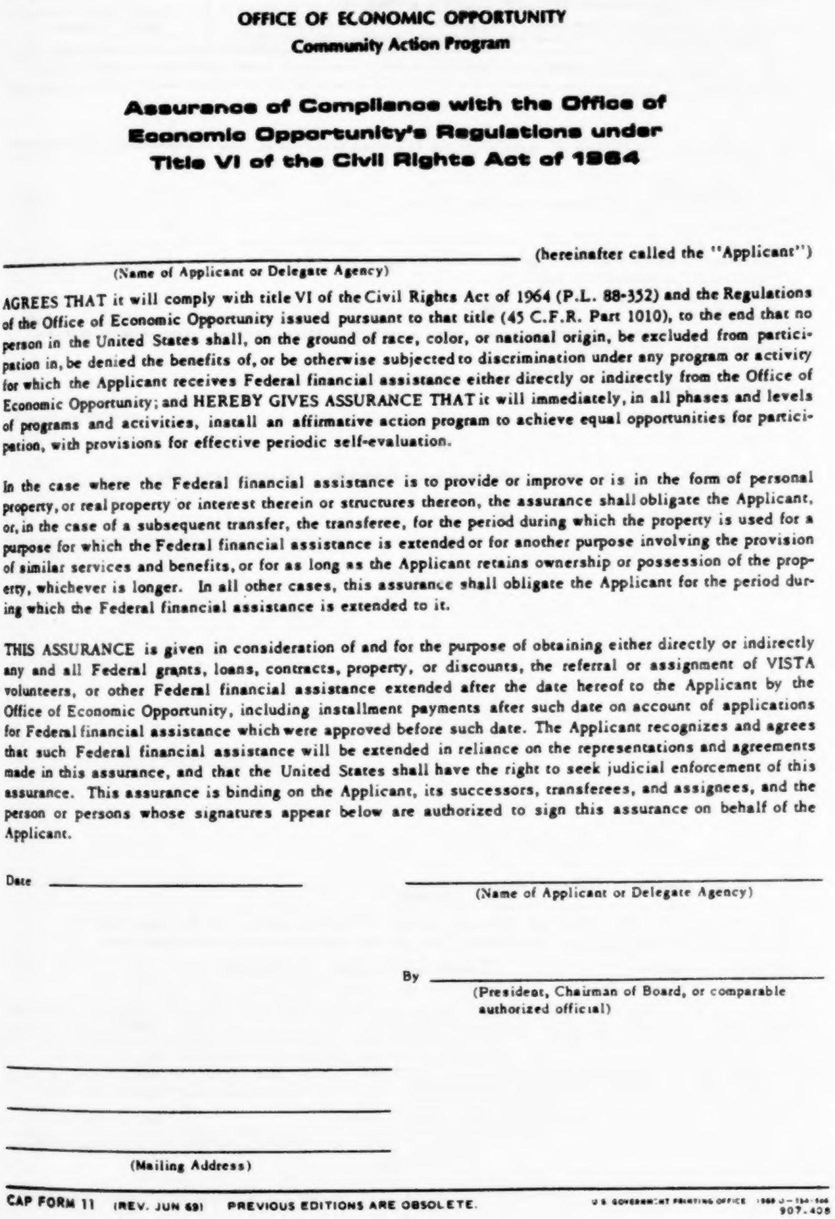
For family units with more than 6 members, add $1,713 for each additional member in a non-farm family and $1,450 for each additional member in a farm family.

POVERTY GUIDELINES FOR HAWAII

Size of family unit	Non-farm family	Farm family
1	$4,913	$4,188
2	6,488	5,525
3	8,063	6,863
4	9,638	8,200
5	11,213	9,538
6	12,788	10,875

For family units with more than 6 members, add $1,575 for each additional member in a non-farm family and $1,338 for each additional member in a farm family.

APPENDIX C



OFFICE OF ECONOMIC OPPORTUNITY
Community Action Program

Assurance of Compliance with the Office of Economic Opportunity's Regulations under Title VI of the Civil Rights Act of 1964

____________________________________ (hereinafter called the "Applicant")
(Name of Applicant or Delegate Agency)

AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the Regulations of the Office of Economic Opportunity issued pursuant to that title (45 C.F.R. Part 1010), to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance either directly or indirectly from the Office of Economic Opportunity; and HEREBY GIVES ASSURANCE THAT it will immediately, in all phases and levels of programs and activities, install an affirmative action program to achieve equal opportunities for participation, with provisions for effective periodic self-evaluation.

In the case where the Federal financial assistance is to provide or improve or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the Applicant, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the Applicant retains ownership or possession of the property, whichever is longer. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining either directly or indirectly any and all Federal grants, loans, contracts, property, or discounts, the referral or assignment of VISTA volunteers, or other Federal financial assistance extended after the date hereof to the Applicant by the Office of Economic Opportunity, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date ____________________ ____________________________
(Name of Applicant or Delegate Agency)

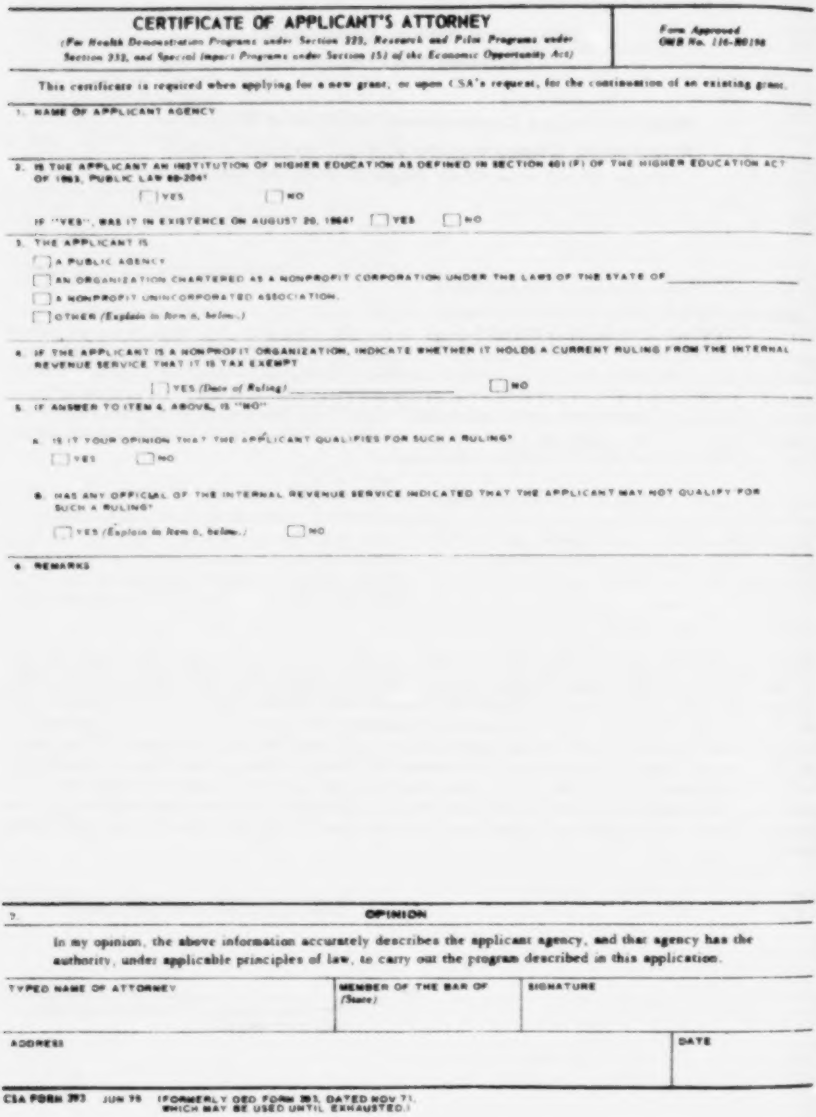
By ____________________________
(President, Chairman of Board, or comparable authorized official)

____
____
____
(Mailing Address)

CAP FORM 11 (REV. JUN 69) PREVIOUS EDITIONS ARE OBSOLETE.

U.S. GOVERNMENT PRINTING OFFICE 1969 O - [illegible]
907.405

APPENDIX D



CERTIFICATE OF APPLICANT'S ATTORNEY

(For Health Demonstration Programs under Section 222, Research and Pilot Programs under Section 232, and Special Impact Programs under Section 152 of the Economic Opportunity Act)

Form Approved
OMB No. 116-R0196

This certificate is required when applying for a new grant, or upon CSA's request, for the continuation of an existing grant.

1. NAME OF APPLICANT AGENCY

2. IS THE APPLICANT AN INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 401(F) OF THE HIGHER EDUCATION ACT OF 1963, PUBLIC LAW 88-204?

☐ YES ☐ NO

IF "YES", WAS IT IN EXISTENCE ON AUGUST 20, 1964? ☐ YES ☐ NO

3. THE APPLICANT IS

☐ A PUBLIC AGENCY

☐ AN ORGANIZATION CHARTERED AS A NONPROFIT CORPORATION UNDER THE LAWS OF THE STATE OF ____________

☐ A NONPROFIT UNINCORPORATED ASSOCIATION.

☐ OTHER *(Explain in Item 6, below.)*

4. IF THE APPLICANT IS A NONPROFIT ORGANIZATION, INDICATE WHETHER IT HOLDS A CURRENT RULING FROM THE INTERNAL REVENUE SERVICE THAT IT IS TAX EXEMPT

☐ YES *(Date of Ruling)* ____________ ☐ NO

5. IF ANSWER TO ITEM 4, ABOVE, IS "NO"

A. IS IT YOUR OPINION THAT THE APPLICANT QUALIFIES FOR SUCH A RULING?

☐ YES ☐ NO

B. HAS ANY OFFICIAL OF THE INTERNAL REVENUE SERVICE INDICATED THAT THE APPLICANT MAY NOT QUALIFY FOR SUCH A RULING?

☐ YES *(Explain in Item 6, below.)* ☐ NO

6. REMARKS

7. **OPINION**

In my opinion, the above information accurately describes the applicant agency, and that agency has the authority, under applicable principles of law, to carry out the program described in this application.

TYPED NAME OF ATTORNEY	MEMBER OF THE BAR OF *(State)*	SIGNATURE
ADDRESS		DATE

CSA FORM 393 JUN 75 (FORMERLY OEO FORM 393, DATED NOV 71, WHICH MAY BE USED UNTIL EXHAUSTED.)

APPENDIX E

Page _____ of _____

COMMUNITY SERVICES ADMINISTRATION

PROJECT PROGRESS REVIEW REPORT

(Check applicable box)
☐ 1st Qtr. ☐ ANNUAL
☐ 2nd Qtr.
☐ 3rd Qtr. ☐ FINAL

OMB No. 116-R0237
Approval expires Au_ust 1980

DATE SUBMITTED

GRANTEE NO.
☐☐☐☐☐

NAME OF GRANTEE

PROGRAM ACCOUNT

PROJECT TITLE

PROJECT GOAL

STANDARD(S) OF EFFECTIVENESS *(No.)*

1. ACCOMPLISHMENTS

A. MEASURABLE

B. NON-QUANTIFIABLE

2. PROBLEMS

3. PLANNED CHANGES *

4. TRAINING & TECHNICAL ASSISTANCE NEEDS *

5. ASSESSMENT OF EFFECTIVENESS

* Do not complete when filing final report or in annual reports for individual projects which will not be refunded.

CERTIFICATION

The undersigned certifies that this report has been completed in accordance with applicable instructions, that it is true to the best of his/her knowledge, information and belief; and that it has been approved, or reviewed and approved, as indicated in Item 6, below.

6. THIS REPORT HAS BEEN *(Check appropriate box.)*
☐ APPROVED BY GRANTEE'S GOVERNING BOARD
☐ REVIEWED BY GRANTEE'S ADMINISTERING BOARD AND APPROVED BY ITS GOVERNING OFFICIALS

7. DATE OF APPROVAL

8. TYPED NAME & TITLE OF PRINCIPAL GOVERNING OFFICIAL OR PRINCIPAL OFFICER OF GOVERNING BOARD

9. SIGNATURE

10. DATE

CSA FORM 440 (REV. AUG 77) (REPLACES OEO FORM 440, DATED AUG 72, WHICH IS OBSOLETE.)
GPO [illegible]

APPENDIX F

FINANCIAL STATUS REPORT

(Follow instructions on the back)

1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED

2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER

OMB Approved No. 80-R0180

PAGE OF PAGES

3. RECIPIENT ORGANIZATION *(Name and complete address, including ZIP code)*

4. EMPLOYER IDENTIFICATION NUMBER

5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER

6. FINAL REPORT ☐ YES ☐ NO

7. BASIS ☐ CASH ☐ ACCRUAL

8. PROJECT/GRANT PERIOD *(See instructions)*
FROM *(Month, day, year)*
TO *(Month, day, year)*

9. PERIOD COVERED BY THIS REPORT
FROM *(Month, day, year)*
TO *(Month, day, year)*

10. STATUS OF FUNDS

PROGRAMS/FUNCTIONS/ACTIVITIES ▶	*(a)*	*(b)*	*(c)*	*(d)*	*(e)*	*(f)*	TOTAL *(g)*
a. Net outlays previously reported	$	$	$	$	$	$	$
b. Total outlays this report period							
c. *Less:* Program income credits							
d. Net outlays this report period *(Line b minus line c)*							
e. Net outlays to date *(Line a plus line d)*							
f. *Less:* Non-Federal share of outlays							
g. Total Federal share of outlays *(Line e minus line f)*							
h. Total unliquidated obligations							
i. *Less:* Non-Federal share of unliquidated obligations shown on line h							
j. Federal share of unliquidated obligations							
k. Total Federal share of outlays and unliquidated obligations							
l. Total cumulative amount of Federal funds authorized							
m. Unobligated balance of Federal funds							

11. INDIRECT EXPENSE
a. TYPE OF RATE *(Place "X" in appropriate box)* ☐ PROVISIONAL ☐ PREDETERMINED ☐ FINAL ☐ FIXED
b. RATE
c. BASE
d. TOTAL AMOUNT
e. FEDERAL SHARE

12. REMARKS: *Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. CERTIFICATION

I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE *(Area code, number and extension)*

269 102

STANDARD FORM 269 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l, 11a, and 12 are self-explanatory, specific instructions for other items are as follows:

Item	*Entry*
4	Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency.
5	This space is reserved for an account number or other identifying numbers that may be assigned by the recipient.
8	Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period.
10	The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency.
10a	Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.
10b	Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.
10c	Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income.
10f	Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e.
10h	Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are: Cash basis—obligations incurred but not paid; Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded. Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance.
10j	Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.
10k	Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations.
10m	Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and l.
11b	Enter rate in effect during the reporting period.
11c	Enter amount of the base to which the rate was applied.
11d	Enter total amount of indirect cost charged during the report period.
11e	Enter amount of the Federal share charged during the report period. If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

APPENDIX G

Approved by Office of Management and Budget, No. 80-R0182

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272–A.)

1. Federal sponsoring agency and organizational element to which the rep is submitted

2. RECIPIENT ORGANIZATION

Name

Number and Street

City, State and ZIP Code:

3. FEDERAL EMPLOYER IDENTIFICATION NO. ▶

4. Federal grant or other identification number

5. Recipient's account numbe o identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks returned (whethe or not deposited)

10. PERIOD COVERED BY THIS REPORT

FROM (month, day, year)

TO (month, day year)

11. STATUS OF FEDERAL CASH *(See specific instructions on the back)*	a. Cash on hand beginning of reporting period	$
	b. Letter of credit withdrawals	
	c. Treasury check payments	
	d. Total receipts *(Sum of lines b and c)*	
	e. Total cash available *(Sum of lines a and d)*	
	f. Gross disbursements	
	g. Federal share of program income	
	h. Net disbursements *(Line f minus line g)*	
	i. Adjustments of prior periods	
	j. Cash on hand end of period	$
12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING ___ Days	13. OTHER INFORMATION	
	a. Interest income	$
	b. Advances to subgrantees or subcontractors	$

14. REMARKS *(Attach additional sheets of plain paper, if more space is required)*

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement:	AUTHORIZED CERTIFYING OFFICIAL	SIGNATURE	DATE REPORT SUBMITTED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE *(Area Code, Number, Extension)*

THIS SPACE FOR AGENCY USE

272-102

STANDARD FORM 272 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	*Entry*
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code.
	If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of Federal Cash Transactions—Continued; otherwise:
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the emplopee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expendeq. If more than three days cash reqirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
13b	Enter amount of advance to secondary recipients included in item 11h.
14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

☆ GPO 1976—O-240-453 #22

STANDARD FORM 272 (BACK) (7–76)

ACCOUNTING SYSTEM CERTIFICATION

(OEO Instruction 6801-1)

APPENDIX H

ADDRESS *(OEO Program Office/Region)*

SECTION I. STATEMENT OF PUBLIC FINANCIAL OFFICER *(If the applicant is a Public Agency or when the Accounting System of a Private-nonprofit Agency will be maintained by a Public Agency.)*

I am the Chief Financial Officer of ______________________________
(NAME OF PUBLIC AGENCY)

and, in this capacity, I will be responsible for providing financial services adequate to insure the establishment and maintenance of an accounting system for ______________________________
(NAME OF APPLICANT)

which is a public (or nonprofit) agency charged with carrying out an OEO program in ______________________________

______________________________ . The accounting system will have internal controls
(NAME OF COMMUNITY)

adequate to safeguard the assets of such agency(ies), check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency(ies).

NAME OF PUBLIC AGENCY		
TYPED NAME OF FINANCIAL OFFICER	SIGNATURE	DATE

SECTION II. STATEMENT OF PUBLIC ACCOUNTANT *(If applicant is a Private-nonprofit Agency or a Public Agency whose accounting system will not be maintained by a Public Agency.)*

I am a certified or duly licensed public accountant and have been engaged to examine and report on the financial accounts of the ______________________________ , which is a private-nonprofit organiza-
(NAME OF APPLICANT)

tion (or public agency) carrying out an OEO program in ______________________________
(NAME OF COMMUNITY)

I have reviewed the accounting system that this agency has established and, in my opinion, it includes internal controls adequate to safeguard the assets of the agency, check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency.

NAME OF FIRM		
TYPED NAME OF ACCOUNTANT	SIGNATURE	DATE

OEO FORM 380 JAN 72

GSA DC [illegible]

Subpart 1061.90—State Agency Assistance Funded Under Section 231 of the Economic Opportunity Act

SOURCE: 45 FR 74929, Nov. 13, 1980, unless otherwise noted.

§ 1061.90-1 Applicability.

This subpart is applicable to grants, contracts, and cooperative agreements funded under section 231 of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1061.90-2 Purpose.

The purpose of this subpart is to provide to State Governors criteria by which they may choose a State agency as the agency eligible to apply to the Community Services Administration for funds under section 231 of the Economic Opportunity Act of 1964, as amended (EOA). This subpart also details the goals which are to be addressed with funds provided under section 231; pre-funding requirements; the application process; and post-funding requirements.

§ 1061.90-3 Timeframe for implementation of rule.

The provisions of this rule are applicable to any agency funded after December 15, 1980. For existing grantees the provisions of this rule will be effective for awards made on or after July 1, 1981. However, earlier implementation is permitted by mutual agreement between the Governor and the CSA Regional Office which funds and administers the grant.

§ 1061.90-4 Procedures for selecting a State agency to receive assistance under Section 231 of the EOA.

(a) *How a State agency is selected.* The Governor of a State may select a State agency within his or her State as the agency which will carry out those anti-poverty efforts described in this rule. The agency so selected by the Governor will be considered by CSA to be the State agency to receive section 231 funds and to perform the work program under the policies in this subpart until the Governor notifies CSA of his or her selection of a successor agency. State agencies receiving section 231 funds as of December 15, 1980 will continue to be recognized by CSA as the State agency selected by the Governor unless CSA is otherwise notified. The agency which the Governor selects will be the agency to whom prior notification of financial assistance under section 242 will be provided. The agency selected must be one (1) whose Director has direct line authority and responsibility for implementing the goals of a CSA-approved work program; (2) which has direct organizational access to the Governor for the purposes of carrying out the goals of the CSA-approved work program; (3) which has the demonstrated ability to mobilize State and Federal resources in support of the anti-poverty efforts of Community Action Agencies and other anti-poverty groups; and (4) which has proven experience in planning, coordinating, administering or operating programs for the poor.

(b) *Determination of eligibility.* Sixty days prior to submission of an application for funding the agency selected by the Governor will be responsible for providing the appropriate CSA Regional Office with documents and other data and information by which the CSA Regional Director can verify eligibility of the agency. These supporting documents must address each of the elements described in paragraphs (a) (1) through (4) of this section.

§ 1061.90-5 Goals and eligible activities.

(a) *Mandated goals for all work programs.* CSA recognizes that States differ in their constitutional, statutory and organizational patterns. States also differ in terms of resources available, the causes of poverty, and the resulting programs. However, regardless of these differences CSA believes that the following are valid anti-poverty goals for all States. Therefore, Goals #1 through #5 listed below, along with their selected activities, must be addressed in *all* work programs:

(1) *Goal* #1: To increase the amounts and kinds of Federal, State

and private resources available for anti-poverty activities within a State.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Seeking out, developing or assisting in the development of every State, local, Federal and non-Federal resource that can be marshalled effectively and/of coordinated to assist poor persons, Community Action Agencies, State commuity action associations, and other anti-poverty efforts within the State.

(B) Developing and carrying out strategies for obtaining additional resources for new and existing anti-poverty activities.

(C) Initiating or stimulating the development and implementation of anti-poverty programs which are needed and not being provided adequately in the State.

(D) Promoting the utilization of all available State resources by making necessary information and support available to poor persons.

(2) *Goal* #2: To strengthen State capabilities for planning and coordinating in order to insure that available assistance related to the elimination of poverty can be more responsive to the needs and conditions of the poor within a State.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Promoting the maximum feasible participation of poor people in the planning, conduct and evaluation of other State agency operations and programs which affect the poor.

(B) Developing interagency mechanisms at the State and local program level to insure good communications between State and local agencies, particularly Community Action Agencies and State community action associations, and other agencies and offices whose activities affect the poor.

(C) Developing a formal mechanism by which to advise departments of State government of the capabilities of Community Action Agencies and other CSA-funded anti-poverty groups to assist State agencies in their anti-poverty efforts.

(D) Working for representation of poor persons on State committees and other entities which develop policy, provide advice or operate programs affecting the poor.

(3) *Goal* #3: To assure that the Governor has current and expert advice and information on poverty problems and anti-poverty efforts within the State.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Providing the Governor with information and advice with respect to the policies and programs of the Community Services Administration and other anti-poverty resources.

(B) Providing the Governor, the State legislature, and other state agencies with information on the causes and conditions of proverty in the State.

(C) Advising the Governor on the status and impact of State and Federal programs and services affecting poor individuals in the State.

(D) Assisting the Governor in carrying out the provisions of section 242 of the EOA.

(E) Drafting an Annual Report on Poverty in the State for delivery by the Governor to the State legislature and to the citizens of the State.

(4) *Goal* #4: To serve as the major point of intergovernmental contact between CSA and other State agencies, with the exception of the Governor.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Communicating to CSA on a regular basis major state anti-poverty policies, concerns of State government officials about CSA or other Federal anti-poverty efforts, and information about successful state government approaches to anti-poverty problems.

(B) Explaining CSA policies and programs to other state agencies, setting up appropriate meetings between CSA and state officials, and officially advising CSA of program operation capabilities of state agencies which may be designated to receive CSA funds other than those under section 231.

(5) *Goal #5:* To support the implementation of the mandatory Goals [§ 1061.90–5(a) (1) through (5)] through the provision of training and technical assistance to community

action agencies, state community action associations, and other local anti-poverty organizations.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Developing and holding workshops and seminars about state anti-poverty program policies and requirements.

(B) Providing on-site assistance to achieve maximum coordination and the fullest benefit of both Federal and state anti-poverty programs.

(C) Developing guidance materials for dissemination to CSA grantees and other appropriate anti-poverty groups or state agencies.

(b) *Supplementary goals and activities.* In those instances where a selected State agency has *funds available* under Section 231 *above and beyond those required to carry out its mandated work program* as described in (a) above, the agency may address one or more of the following in its proposed work program:

(1) *Goal:* To assure that Community Action Agencies and other CSA grantees have available to them the technical expertise and information and other assistance which will enable them to carry out effectively and efficiently their anti-poverty efforts.

(i) Acceptable activities in achieving this goal include:

(A) In consultation with CSA, assisting grantees in implementing corrective actions recommended by CSA as a result of evaluations, pre-reviews, monitoring and/or audit reports.

(B) In consultation with CSA, CSA grantees, and other antipoverty groups, sponsoring or participating in training programs and workshops for staff and board members utilizing state resources and personnel to the extent possible.

(C) Providing information and assistance to CAAs, other CSA grantees, and other anti-poverty groups, in planning, developing and operating programs including volunteer programs.

(2) *Goal:* To assure that the Director of CSA has current and expert information on the impediments to coordinating antipoverty programs at the State level and how these impediments may be eliminated.

(i) Acceptable activities in achieving this goal include:

(A) Advising and assisting CSA in identifying problems posed by Federal and State statutory or administrative requirements that impede state-level coordination of CSA-related programs, and in developing methods or recommendations for overcoming these problems.

(B) Advising CSA on procedures and programs which will promote State agency participation in carrying out the aims and objectives of the Economic Opportunity Act.

(C) Developing an Annual Report to the Director of CSA on the status and impact of Federal and State programs and services affecting low-income individuals within the State.

(c) *Measurable goals and activities in the Work Program.* Goals and activities appearing in the applicant's work program must be stated in terms which are clearly measurable and must include the quantity as well as the quality and character of the improvements to be achieved.

§ 1061.90–6 Application process.

(a) *Funding offices.* The responsibility for application review, grant approval, and monitoring of grants funded under section 231 lies with the appropriate CSA Regional Office.

(b) *Application requirements.*

(1) Sixty days prior to the submission of an application for funds to CSA, an applicant selected by the Governor must:

(i) Submit eligibility documents to CSA as required in § 1061.90–4(b) of this part; and

(ii) Notify the State clearinghouse and the area clearing houses (if appropriate) of its intent to apply for funds. (See § 1067.10 of this Chapter for detailed instructions.)

(2) Ninety days before the expected funding date or, for refundings, ninety days before the end of the grantee's program year, the applicant/grantee must submit to the appropriate CSA Regional Office a formal grant application.

(3) The following documents must be submitted as part of the formal funding request:

(i) SF-424, Federal Assistance (including all comments received from clearinghouses);

(ii) CSA Form 419, Summary of Work Program and Budget; and

(iii) CSA Form 515, Grantee Budget Information (pages 1 and 2) (See OMB Circular A-102.)

(4) If delegating programs, the following additional documents must be submitted as part of the formal funding request:

(i) CSA Form 85, Administering Agency Funding Estimate;

(ii) CSA Form 87, Delegate Agency Basic Information; and

(iii) CAP Form 11, Assurance of Compliance with Civil Rights Act.

§ 1061.90–7 Post funding requirements.

Grantees receiving funds under Section 231 must comply with all CSA rules applicable to grants funded under this section. See § 1000.1 of this Chapter for a listing of all such rules.

PART 1064—LIMITED PURPOSE AGENCIES; ELIGIBILITY, ORGANIZATION AND FUNCTIONS

Subpart 1064.1—Appeal To CSA By An Organization That Would Like To Serve As A Delegate Agency (CSA Instruction 6441–1)

Sec.
1064.1–1 Applicability.
1064.1–2 Effective date.
1064.1–3 Legislation.
1064.1–4 Policy.
1064.1–5 Requirement that CAA notify prospective delegate agency.
1064.1–6 Appeal procedure for rejected applicant.
1064.1–7 Criteria for resolving appeal.

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 44 FR 56555, Oct. 1, 1979, unless otherwise noted.

Subpart 1064.1—Appeal To CSA By An Organization That Would Like To Serve As A Delegate Agency (CSA Instruction 6441–1)

§ 1064.1–1 Applicability.

This subpart applies to all programs which are financially assisted under Title II of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1064.1–2 Effective date.

March 14, 1972 (CSA Instruction 6441–1).

§ 1064.1–3 Legislation.

Section 604(1) of the Economic Opportunity Act of 1964, as amended, provides in part:

> "The Director shall prescribe procedures to assure that * * * (1) special notice of and an opportunity for a timely and expeditious appeal to the Director is provided for an agency or organization which would like to serve as a delegate agency under Title II and whose application to the community action agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Director."

§ 1064.1–4 Policy.

This subpart implements section 604(1) by providing procedures to ensure a timely and expeditious appeal for organizations which submit initial or renewal applications to a Community Action Agency (CAA) to serve as delegate agencies and by establishing standards for resolving appeals in a manner which preserves for a CAA the primary responsibility for the planning, administration and evaluation of community action programs in the community which it serves.

§ 1064.1–5 Requirement that CAA notify prospective delegate agency.

When an organization informs the CAA that it desires to apply for, or renew delegate agency status, the CAA shall promptly inform such organization of the approximate date by which an application must be submitted in order to be considered for the next funding period. Such applications should be submitted no later than 180 days before the end of the CAA's funding period in order to be considered during the CAA's planning cycle for the coming funding period. In addition, the CAA shall promptly inform each agency which submits an application to become or to continue to be a delegate agency of the provisions of this subpart and the date it expects to receive funding guidance. Applications which are submitted after the planning cycle begins will normally not be considered. (Further instructions and procedures are set forth in CSA Instruction 6710-1).

§ 1064.1-6 Appeal procedure for rejected applicant.

(a) If a CAA either rejects, wholly or substantially, such an application or fails to act upon the application by the time it receives funding guidance from CSA, the agency submitting the application may appeal the rejection or failure to act to the CSA official responsible for approving the grant awarding financial assistance to the CAA. Ordinarily, this official will be the CSA Regional Director for the appropriate Region. If the CAA rejects the application in response to an exercise by CSA of authority under the grant, the agency may also appeal the decision through these procedures.

(b) The agency making such an appeal shall submit to the responsible CSA official a copy of all material it submitted to the CAA in its application as well as a statement setting forth how the application would:

(1) Involve activities which can be closely coordinated with community action programs.

(2) Involve significant new combinations of resources or new or innovative approaches to the problems of the poor. Or;

(3) Be structured in a manner which will, within the limits of the activities contemplated, most fully and effectively promote the purposes of the Act.

(c) In addition, if it is seeking to replace an existing delegate agency or to operate a program currently operated by the CAA, the rejected applicant should explain why it believes it could operate the program more effectively than the CAA or existing delegate agency. If it is seeking to operate a new program not currently operated either by the CAA or an existing delegate agency, the applicant should explain why its proposed program would be superior to those currently operated by or through the CAA. The statement submitted by the rejected applicant shall also contain a description of its efforts to combine the proposed activities with those of the CAA and the CAA's response to such efforts. The rejected applicant shall send a copy of the statement to the CAA at the same time the statement is submitted to the responsible CSA official.

(d) The CAA may, within 10 days of receiving a copy of the appeal, submit to the responsible CSA official material in reply to the appeal. The CAA shall also send a copy of such material to the applicant making the appeal.

§ 1064.1-7 Criteria for resolving appeal.

(a) The responsible CSA official shall, whenever possible, decide the appeal before the CAA submits its formal funding request. To maintain the principle of local initiative in community action programs, the responsible CSA official will sustain the action of the CAA unless he/she finds that:

(1) The CAA did not give fair and adequate consideration to the rejected applicant's application,

(2) Or the decision of the CAA will have a decidedly adverse effect on the quality of the overall community action program in the local community or would preclude achievement of the objectives of a Special Emphasis program as described in Section 222(a) of the Act.

(b) If the responsible CSA official concludes that the CAA did not provide fair and adequate consideration of the application, he/she shall return it to the CAA with the requirement that it reconsider the application and inform the responsible CSA official in writing of the steps taken to reconsider the application and of the decision reached.

(c) If the applicant has received a fair and adequate consideration, the responsible CSA official may nonetheless review the case to ascertain whether criterion in paragraph (a)(2) of this section has been met. In reviewing the case, the CSA official shall bear in mind the amount of funds available to both the CAA and/or the prospective applicant. Options open to the reviewing official include, but are not limited to:

(1) Sustaining the rejection of the applicant;

(2) Direct funding of the rejected applicant in those instances where CSA is so authorized by the Act (ordinarily limited to Special Emphasis program described in Section 222(a) of the Act);

(3) Requiring that the CAA reconsider the rejected application; and

(4) Taking such other steps as may be deemed appropriate under the circumstances, including not providing funds to the CAA to administer the program which the rejected applicant wanted to carry out.

(d) The responsible CSA official shall promptly inform the applicant and the CAA in writing of his/her decision.

PART 1067—FUNDING OF CSA GRANTEES

Subpart 1067.4—Standards for Evaluating the Effectiveness of CSA-Administered Programs and Projects

Sec.
1067.4-1 Applicability.
1067.4-2 Definitions of terms as used in this subpart.
1067.4-3 Purpose.
1067.4-4 Policy.
1067.4-5 Setting goals consistent with standards.
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APPENDICES A THROUGH O TO SUBPART 1067.4

Subpart 1067.5—General Conditions Governing Certain CSA Grants Funded (CSA Instruction 7050-1)

1067.5-1 Applicability.
1067.5-2 Purpose.
1067.5-3 Policy.
APPENDIX A THROUGH C TO SUBPART 1067.5

Subpart 1067.9—Special Conditions When a Community Action Component Is Delegated to a Church or Church Related Organization (CSA Instruction 6441-01)

1067.9-1 Applicability.
1067.9-2 Effective date.
1067.9-3 Purpose.
1067.9-4 Policy.
1067.9-5 Conditions applicable to the use of grant funds in church-related schools or school systems.
Sec.
1067.9-6 Conditions applicable to the use of grant funds for activities to be conducted by a church or church-related organization.

Subpart 1067.10—CSA Procedures for the Federal Project Notification and Review System (PNRS) (CSA Instructions 6710-3a and 6710-3a CH 2)

1067.10-1 Applicability.
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1067.10-4 Procedures.
1067.10-5 CSA grantee participation in A-95 coordination process.
1067.10-6 Section 712—On-going and post-grant coordination.
1067.10-7 SF 424—Availability.

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1067.16-1 Applicability.
1067.16-2 Definitions.
1067.16-3 Purpose.
1067.16-4 Grant changes requiring prior OED approval.
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1067.16-6 Submission of amendment requests to OED for approval.
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Subpart 1067.17—Preparing a Budget for a Title VII Grant Under the Community Services Act (CSA Instruction 6710-8)

1067.17-1 Applicability.
1067.17-2 Purpose.
1067.17-3 Preparation of budget forms for grant action.
1067.17-4 CSA Form 325a, Budget Support Sheet (Parts I and II).
1067.17-5 CSA Form 325, budget summary.

Subpart 1067.30—Preparation of CSA Form 314, Statement of CSA Grant (CSA Instruction 6710-CH 10)

1067.30-1 Applicability.
1067.30-2 Definitions of terms as used in this subpart.
1067.30-3 Purpose.
1067.30-4 Policy.
1067.30-5 Procedure.

Sec.

Subpart 1067.40—Applying for a Grant Under Title II, Sections 221, 222(a), 231, and 232 of the EOA (CSA Instruction 6710–1 CH 11)

1067.40–1 Applicability.
1067.40–2 Policy.
1067.40–3 Application process for funds under Title II, Sections 221, 222(a), and 231 of the EOA.
1067.40–4 Amendments.
1067.40–5 Where to apply.

Subpart 1067.41—Program Account Structure (CSA Instruction 6100–1b and 6100–1b CH 1)

1067.41–1 Applicability.
1067.41–2 Policy.
1067.41–3 Description of Program Accounts.

APPENDIX A AND B TO SUBPART 1067.41

Subpart 1067.42—Establishing and Maintaining Program Accounts (CSA Instruction 6806.01)

1067.42–1 Applicability.
1067.42–2 Effective date.
1067.42–3 Establishing and maintaining program accounts.

Subpart 1067.43—Accounting for Delegated or Contracted Activities (CSA Instruction 6806–04)

1067.43–1 Applicability.
1067.43–2 Effective date.
1067.43–3 Accounting for delegated or contracted activities.

AUTHORITY: Secs. 213, 602, 604 of the Economic Opportunity Act of 1964, as amended; 81 Stat. 395; 78 Stat. 528; 81 Stat. 715 (42 U.S.C. 2796, 2942, 2944); § 1067.30–3 also issued under sec. 682(e), Pub. L. 97–35, 95 Stat. 519 (42 U.S.C. 9911).

Subpart 1067.4—Standards for Evaluating the Effectiveness of CSA-Administered Programs and Projects

SOURCE: 40 FR 28794, July 9, 1975, unless otherwise noted.

§ 1067.4–1 Applicability.

This subpart applies to all grants made under Titles I, II, III-B, and VII of the Community Services Act as amended if the assistance is administered by the Community Services Administration.

§ 1067.4–2 Definitions of terms as used in this subpart.

(a) Program. The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specified activities.[1] Example: Senior Opportunities and Services Program.

(b) Project. The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program.[1] Example: Meals on Wheels (in the local community)

(c) Standard. A general statement describing one or more elements of program and project effectiveness. Example: Stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs (for the elderly). (See Appendix E to Subpart 1067.4)

(d) Program and Project Effectiveness—he extent to which identifiable progress is being made toward (1) the overall purposes of the Community Services Act and (2) the specific purposes of the program authorities under various Titles of the Act.

§ 1067.4–3 Purpose.

The purpose of this subpart is to outline standards against which the effectiveness of programs and projects funded by the Community Services Administration will be assessed. It is not the purpose of this subpart to establish standards for conducting evaluations. The focus is on the accomplishments which constitute program and project effectiveness.

§ 1067.4–4 Policy.

(a) *Standards of Program and Project Effectiveness.* (1) The Economic Opportunity Act of 1964 as amended states that "It is * * * the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation * * *."

(2) In furtherance of the goal of working toward the elimination of poverty Congress mandated numerous

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[1] Adapted from Wholey, Joseph, et. al., *Federal Evaluation Policy,* Washington, DC: The Urban Institute, 1971. P. 24

program authorities, each with its specific purposes, through which various national programs and local projects are funded. The purposes of each of these authorities are in fact the standards of effectiveness against which programs and projects will be assessed. Through the use of these standards CSA aims to provide a consistent framework within which grantees will proceed to establish priorities, goals and project designs to meet local needs.

(3) The Appendices of this subpart outline the standards of effectiveness derived from the authorizing legislation for the program authorities under Titles I, II, III-B, and VII of the Community Services Act. *Exception:* There are several cases where additional standards are included which are derived from project management experience.

(b) *Applicability of Standards of Effectiveness.* Beginning with FY 1976 fundings, projects operated by grantees must be developed consistent with the requirements stated under each of the following Titles:

(1) *Titles I and III-B:* Projects funded under the above Titles must be consistent with one or more of the standards for the particular program or project. (See Appendices B and N.)

(2) *Title II:* This Title includes both general and specific standards. General standards are standards that are applicable to all program authorities under Title II, e.g. maximum feasible participation. Specific standards are those that are stated for the various program authorities under Title II, e.g. Senior Opportunities and Services.

(i) As a result, Title II programs and projects must address general standards of effectiveness PLUS specific standards.

(ii) Therefore, each project developed by grantees and funded under Title II must be developed consistent with the following:

(*a*) One or more of the general standards applicable to all Title II programs (See Appendix A to Subpart 1067.4), and

(*b*) One or more of the specific standards developed for the particular program (Appendices B through M).

(iii) It should be noted that although each project must address at least one of the general standards, grantees must assure that their work program as a whole addresses all of the general standards.

EXAMPLES: *Emergency Food and Medical Services, section 222(a)(5)*: General standards: One or more standards in Appendix A to Subpart 1067.4; Specific standards: One or more standards in Appendix D to Subpart 1067.4.

State Agency Assistance, (SEOOs), section 231: General standards: One or more standards in Appendix A to Subpart 1067.4; Specific standards: One or more standards in Appendix M to Subpart 1067.4.

(3) *Title VII:* Projects funded under Title VII must be consistent with the four legislative standards stated in Appendix O to Subpart 1067.4. Title VII grantees will note that there is considerable overlap among the four standards. Accordingly, any project goal which addresses one of these standards will simultaneously address portions of the others as well.

§ 1067.4-5 Setting goals consistent with standards.

(a) Measures are needed in order to determine whether programs and projects are effective. These measures will be the project goals developed locally by the grantee. Each grantee is already required to establish planning goals as part of its regular grant application process. The additional requirement established by this subpart is that such goals must be consistent with and directly related to the legislative standards of program and project effectiveness.

(b) As Title II also contains general standards in addition to the specific standards of effectiveness, project goals for Title II programs must be developed in such a manner as to insure that the activities undertaken in pursuing these goals will address the general Title II standards as well as the specific standards for that program.

(c) Project goals must be specific as to both the character and the extent of progress which should be accomplished during the funding period. Goals should be stated in terms which are clearly measurable and should define the quantity as well as the quality and character of the improvements to be achieved. In addition, they must be logically related to the legislative standards which they are designed to meet.

(d) The various appendices of this Instruction provide examples of project goals which address the legislative standards for each program. These examples are provided only as a guide to grantees who must develop their own goals based on local needs and conditions.

§ 1067.4-6 Procedures.

(a) Grantees should establish their local goals consistent with the standards of project effectiveness as part of their regular grant application process. For all projects funded under Titles II (except section 232) and III-B, the general (for Title II) and specific standards to be addressed and the project goals established consistent with those standards should be listed in the first column of the OEO Form 419. For projects funded under section 232 this should be included in the Narrative Projects Description of the grant application. The activities described for each project goal should clearly indicate how the general as well as the specific standards of effectiveness will be addressed.

(b) For all projects funded under Titles I and VII the specific standards to be addressed and the project goals established consistent with these standards should be stated in the Narrative Project Description of the grant application.

(c) In reviewing and approving grantee applications for funding, CSA will be concerned not only with whether the grantee's goals are realistic and consistent with the grantee's overall strategy, but also with whether such goals are consistent with the specific legislative purposes embodied in the standards of effectiveness.

(d) CSA will indicate its approval of the standards to be addressed and of the project goals developed by the grantee (as modified in the grant review process) by listing them as a special condition attached to the grant prior to funding. Once the grantee has acknowledged acceptance of these goals as stated in the special condition by signing and returning the grant, the grantee's performance over the course of the funding period will be assessed against the approved work program.

§ 1067.4-7 Reporting requirements.

It is not the intent of CSA to impose additional reporting burdens on grantees. Therefore, separate reports on progress in achieving standards of project effectiveness will not be required. Rather, grantees shall assess their progress in meeting project standards in their regular periodic reports, as required by CSA regulations: (1) For grantees under Titles II (except section 232) and III-B, in their Program Progress Review report, OEO Form 440 (see OEO Instruction 7031-1); and (2) for grantees under Title I, Section 232 of Title II, and Title VII, in their quarterly monitoring reports.

APPENDIX A TO SUBPART 1067.4—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II: LOCAL INITIATIVE AND GENERAL STANDARDS

Reference	Standards of effectiveness	Examples
Title II, section 201(a)	I. Strengthened community capabilities for planning and coordinating so as to insure that available assistance related to the elimination of poverty can be more responsive to local needs and conditions.	A staff person will be detailed to county planning department to assist in planning and evaluation of general revenue sharing.
	II. Better organization of services related to the needs of the poor.	10 man-days of technical assistance will be provided to local governments in applying for CDC and CETA grants.
	III. Maximum feasible participation of the poor in the development and implementation of all programs and projects designed to serve the poor.	2 representatives from target area will be placed on governing board of United Fund.

Appendix A to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II: Local Initiative and General Standards—Continued

Reference	Standards of effectiveness	Examples
	IV. Broadened resource base of programs directed to the elimination of poverty so as include all elements of the community able to influence the quality and quantity of services to the poor.	Obtain State grant for lead-paint testing program.
Title II, section 201(a)(3)	V. Greater use of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing available resources.	30 prefabricated houses will be produced annually through purchase and operation of housing factory.
Title II, section 223	VI. Maximum employment opportunity, including opportunity for further occupational training and career development, for residents of the area and members of the groups served.	20 job slots will be developed for paraprofession in local health agencies and institutions.

Appendix B to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title I and Title II, Section 232: Research and Demonstration

Reference	Standards of effectiveness	Examples of project goals
Title I, section 102	I. Development of new approaches and/or methods that will aid in overcoming special problems of poverty or otherwise further the purposes of titles I and II through.	(NOTE: R. & D. at a minimum, should contain testable hypotheses in conjunction with a fully developed research design associated with project activities.)
Title II, section 232	A. Support of projects designed to provide conclusive information concerning the usefulness of a program or technique thought to have the potential of major impact on an identified special problem. The generation of persuasive knowledge is the central goal of such efforts; the major criterion of success is the utility of the knowledge produced in designing projects which meet carefully defined needs of the poor. B. Support of individual or series of projects which test specific program strategies or techniques to deal with special problems of poverty. Such demonstrations are designed to: (1) Provide an experience base sufficient to determine the applicability of the strategy or technique; and (2) provide exposure for strategies and techniques to increase their acceptance and application by funding sources and policymakers. C. Support of projects which: (1) Directly intervene to change established institutions or, (2) establish alternative institutions or mechanisms to serve poor people.	
Project management experience.	II. Collection and maintenance of appropriate data which is adequate to produce dissemination and utilization of project results.	

Appendix C to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Secs. 222(a)(II) and 214: Housing Development and Rehabilitation

Reference	Standards of effectiveness	Examples of project goals
Title II, section 222(a)(11) and 214.	I. Provision of assistance and appropriate housing services and social services in low-income families in order to help them acquire adequate, safe, and sanitary housing.	Assist 50 families in obtaining FmHA mortgages.

Appendix D to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 222(a)(5): Emergency Food and Medical Services

Reference	Standards of effectiveness	Examples of project goals
Title II, section 222(a)(5)........	I. Improvement in the nutritional status of the target population. II. Reduction in hunger among the target population..	Develop reduced priced meals for the elderly in 2 local hospital cafeterias. Certify 100 additional families for food stamps.

Appendix E to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 222(a)(7): SOS

Reference	Standards of effectiveness	Examples of project goals
Title II, section 222(a)(7)........	Identification and meeting of needs of older, poor persons above the age of 60 to assure them greater self-sufficiency.	
	I. Development and provision of employment services to older poor persons.	Locate 20 part-time jobs for elderly poor persons.
	II. Development and provision of volunteer services to older poor persons.	Recruit and train 25 teenagers to do odd jobs for disabled elderly.
	III. Effective referral of older poor persons to existing health, transportation, education, housing, legal, consumer, transportation, education, and recreational and other services.	Provide effective referral and followup to 200 elderly persons annually.
	IV. Stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs.	Mobilize business and industry to provide $5,000 for elderly drop in centers.
	V. Modification of existing procedures, eligibility requirement and program structures to facilitate the greater use of, and participation in, public services by older persons.	Age limits will be raised for training programs offered by local community colleges to enable participation by the elderly.
	VI. Development of all-season recreation and service centers controlled by older persons.	Organize and train council of elders to operate 5 existing drop in centers.

Appendix F to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 222(a)(10): Environmental Action

Reference	Standards of effectiveness	Examples of project goals
Title II, section 2(a)(10)..........	I. Development of opportunities for low-income persons for work (which would not otherwise be performed) on projects designed to combat pollution.	Obtain 25 job slots for low-income persons in the development of abandoned canal system as a recreation facility.

Appendix F to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 222(a)(10): Environmental Action—Continued

Reference	Standards of effectiveness	Examples of project goals
	II. Development of opportunities for low-income persons for work (which would not otherwise be performed) on projects designed to improve the environment.	(See above).

Appendix G to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 222(a)(12): Energy

Reference	Standards of effectiveness	Examples of project goals
Title II, section 222(a)(12)	I. Participation of low-income individuals and families, including the elderly and the near poor, in energy conservation programs designed to reduce individual and family energy consumption.	Effectively winterize homes owned by poor people to reduce the use of fuel by 15-25 percent, and bring heating/cooling cost within family budget.
Project management experience.	II. Development of community based programs to deal with energy-related programs.	Organize and operate a crisis center directed and managed by community-based board.
Do	III. Consistency with State, local, and national use goals so as to meet local needs of cost, supply, and demand, e.g., conversion, use of alternate sources of energy.	On the basis of prevalent type of energy sources, cost, and supply convert 5 percent of dwellings occupied by the poor to cheaper/more efficient/more abundant energy source.
Title II, section 222(a)(12)	IV. Participation of low-income individuals and families in programs designed to lessen the impact on them of the high cost of energy.	Establish revolving emergency loan fund to give direct financial assistance to 100 neediest families for fuel payments and to prevent utility shutoffs.

Appendix H to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 222(a)(13): Summer Youth Recreation

Reference	Standards of effectiveness	Examples of project goals
Title II, section 222(a)(13)	I. Recreational opportunities for low-income children during the summer months.	Provide 150 camperships for low-income children

Appendix I to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 226: Design and Planning Assistance

Reference	Standards of effectiveness	Examples of project goals
Title II, section 226	I. Delivery of technical assistance relating to housing, neighborhood facilities, transportation, and other aspects of community planning and development to persons and community organizations or groups not otherwise able to afford such assistance.	(To be developed if and when funds are made available for projects under this program authority.)

Appendix I to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 226: Design and Planning Assistance—Continued

Reference	Standards of effectiveness	Examples of project goals
	II. Delivery of professional architectural and related services relating to housing, neighborhood facilities, transportation, and other aspects of community planning and development to persons and community organizations or groups not otherwise able to afford such assistance. III. Maximum use of the voluntary services of professional and community personnel.	

Appendix J to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 227: Youth Recreation and Sports Program

Reference	Standards of effectiveness	Examples of project goals
Title II, section 227	I. Recreation, physical fitness instruction, athletic competition (with high-quality facilities and supervision) and relate[illegible]cational and counseling services for disadva[illegible]d youth.	Obtain permission to use 3 previously-closed public school gymnasiums during the summer months.

Appendix K to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Secf 228: Consumer Action and Cooperative Programs

Reference	Standards of effectiveness	Examples of project goals
Title II, section 228(a)	I. Improvement in the quality, delivery, and pricing of goods and services used by low-income persons.	Establish 5 consumer education councils.
	II. Availability to assist low-income persons without undue delay or burden of financial credit at reasonable cost.	Organize 5 local banks to provide a credit pool for low-income persons with credit problems.
	III. Development of means and mechanisms of enforcing consumer rights in a way that meets the needs of low-income persons.	Obtain $15,000 in State funds for consumer advocate attorney.
	IV. Education of low-income persons with respect to (consumer) rights, procedures, grievances, views, and concerns.	Ombudsman's role will be played by local newspaper.

Appendix L to Subpart 1067.4—Standards of Program and Project Effectiveness for all Programs and Projects Funded Under Title II, Section 230, Technical Assistance and Training

Reference	Standards of effectiveness	Examples of project goals
Title II, section 230	I. Technical assistance to communities in developing, conducting, and administering programs under title II.	Design and conduct 3 orientation sessions for new employees.

APPENDIX L TO SUBPART 1067.4—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SECTION 230, TECHNICAL ASSISTANCE AND TRAINING—Continued

Reference	Standards of effectiveness	Examples of project goals
	II. Training for specialized or other personnel	Design and conduct a series of workshops for board members to improve the quality of submission of the program progress review report.

APPENDIX M TO SUBPART 1067.4—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SECTION 231: SEOO'S

Reference	Standards of effectiveness	Examples of project goals
Title II, section 231(a)(1)	I. Technical assistance to communities and State and local agencies in developing and carrying out programs under title II.	During the State legislative session, provide title II grantees with weekly status report through a newsletter of pending State social welfare legislation.
Title II, section 231(a)(2)	II. Assistance in coordinating State activities related to title II.	Develop training systems and conduct seminars for State agency personnel regarding antipoverty programs authorized under the Economic Opportunity Act of 1964 as amended.
Title II, section 231(a)(3)	III. Provision of advice and assistance to the director in developing procedures and programs to promote the participation of States and State agencies in programs under title II.	Prepare project performance data for Governor's office for all programs operating under the EOA as amended.
Title II, section 231(a)(4)	IV. Provision of advice and assistance to the director, the economic opportunity council and the heads of other Federal agencies, in identifying problems posed by Federal statutory or administrative requirements that operate to impede State level coordination or programs related to title II and in developing methods or recommendations for overcoming those problems.	Develop and recommend a reporting system for use by CAA's in collecting necessary information regarding statutory and administrative impediments vis a vis all grantmaking agencies.
Project management experience.	V. Advocacy for the poor in State government	Establish membership for poor persons on 5 advisory committees to State antipoverty agencies.
Do	VI. Mobilization of antipoverty resources, particularly at the State level.	Assist two CAA's in obtaining grants from State manpower agency.

APPENDIX N TO SUBPART 1067.4—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE III-B, SECTION 311, 312: MIGRANT, AND SEASONALLY EMPLOYED, FARMWORKERS AND THEIR FAMILIES

Reference	Standards of effectiveness	Examples of project goals
Title III-B, section 311	I. Assistance to migrant and seasonal farmworkers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life.	(To be developed if and when funds are made available for projects under this program authority.)
Section 312(b)	II. Alleviation of the immediate needs of migrant and seasonal farmworkers and their families.	
Do	III. Increased community acceptance of migrant and seasonal farmworkers and their families.	
	IV. Assistance to unskilled migrant and seasonal farmworkers and members of their families in meeting the changing demands in agricultural employment brought about by technological advancement.	

APPENDIX N TO SUBPART 1067.4—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE III-B, SECTION 311, 312: MIGRANT, AND SEASONALLY EMPLOYED, FARMWORKERS AND THEIR FAMILIES—Continued

Reference	Standards of effectiveness	Examples of project goals
	V. Assistance to unskilled migrant and seasonal farmworkers and members of their families to take advantage of opportunities available to improve their well-being and self-sufficiency by gaining regular permanent employment or by participating in available Government employment or training programs..	

APPENDIX O TO SUBPART 1067.4—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE VII, SECTION 712

Reference	Standards of effectiveness	Examples of project goals
Title VII, section 701	I. Improvement in the quality of participation by low-income residents in community life so as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.	1. Startup or acquisition of 2 manufacturing ventures, providing 50 jobs to low-income residents who are currently unemployed, receiving public assistance, or working at marginal wage levels.
Title VII, section 711	II. Solution to critical problems in urban and rural communities and neighborhoods with high concentrations and numbers of low-income persons. III. Producing an appreciable and continuing impact in arresting tendencies toward dependency, chronic unemployment, and community deterioration in such areas. IV. Starting, expanding, and locating enterprises in such areas to provide employment and ownership opportunities for residents of such areas.	2. Construction of 20 units of subsidized housing for low-income elderly residents. 3. Acquisition, development, and construction of industrial park which will provide facilities for manufacturing and commercial enterprises which will employ 100–150 residents and increase the area's tax base by $1.5 million. 4. Through joint venturing, loan guaranties, and bank deposits, attract $750,000 in private investment/loan capital to enterprises in the target area. 5. Train 5 target area residents for middle-management positions in CDC ventures. 6. Train 20 community residents serving on CDC and subsidiary boards in corporate legal responsibilities and analysis of financial reports. 7. Provide technical assistance in the packaging of 10 small business loans for enterprises owned by or employing low-income residents.

Subpart 1067.5—General Conditions Governing Certain CSA Grants Funded (CSA Instruction 7050–1)

SOURCE: 40 FR 27031, June 26, 1975; 40 FR 44327, Sept. 26, 1975, unless otherwise noted.

§ 1067.5–1 Applicability.

This subpart applies to all grants funded under Titles II, III-B and VII of the Economic Opportunity Act of 1964 as amended if the assistance is administered by the Community Services Administration.

§ 1067.5–2 Purpose.

(a) The purpose of this subpart is twofold: (1) To promulgate and forward revised General Conditions applicable to CSA grantees (see § 1067.4–1) which reflect the enactment of the Community Services Act of 1974 and the establishment of the Community Services Administration as the successor authority to OEO by changing all references to the Economic Opportunity Act as amended to read Community Services Act of 1974; changing all references to "OEO" in the General

Conditions to read "CSA"; and adding item 15 which addresses the legal implications of the successor authority on current and future regulations, grant-making documents, special conditions, etc.; and

(2) To publish for the first time as part of the issuance system an Addendum to the General Conditions for Grants Made Under section 712 of the Community Services Act of 1974. (Although not in the issuance system prior to this publication they have been attached to grants since January 1974.)

(b) The General Conditions for Titles II, III-B, and VII remain substantively unchanged from those issued in January 1972. The Addendum to the General Conditions has been changed to reflect the legislation vis-a-vis assets acquired with grant funds (see item 13).

§ 1067.5-3 Policy.

(a) The attached general conditions and the addendum to general conditions for section 712 grants are in effect for all current grant actions to which they apply as of July 28, 1975. These general conditions also will be attached to all future grants actions. However, grantees should note that even if general conditions are not attached, the program accounts in the grant action remain subject to the applicable general conditions in this subpart.

(b) In accepting the grant, the authorized official of the grantee accepts on behalf of the grantee the limitations of the applicable general conditions.

APPENDIX A TO SUBPART 1067.5

GENERAL CONDITIONS GOVERNING GRANTS UNDER TITLES II, III-B AND VII OF THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED (INCLUDING AMENDMENTS MADE BY THE COMMUNITY SERVICES ACT OF 1974)

Program funds expended under authority of this funding action are subject to the provisions of the Community Services Act of 1974, the general conditions listed below, any attached special grant conditions, and Community Services Administration (CSA) directives. The grantee is expected to inform CSA promptly if it fails to receive, or has reason to believe it has failed to receive, all CSA applicable directives or any attachments to the Statement of OEO Grant. Many of those provisions do not represent invariable policies of the CSA and exceptions should be requested in cases in which compliance with one or more of them would cause unnecessary difficulties in carrying out the approved program. Requirements found in grant conditions or CSA directives may be waived only by a written notification signed by an authorized CSA official. Any such waiver must be explicit: no waiver may be inferred from the fact that the funding action is responsive to a grant funding request which may have contained material inconsistent with one or more of these conditions.

1. *Definitions* As used in these conditions:

(a) An "approved program" consists only of those activities described in the grant funding request for which funding is approved in the Statement of OEO Grant and its attachments (which may include modifications of proposed activities) or in CSA approved written amendments to the Statement of OEO Grant.

(b) "Program account funding period" extends from the effective date of a new or refunding action through the termination date or expiration of planned number of months for which funding is provided.

(c) "Total program funds" refers to all amounts approved for expenditure for the approved program as shown on the Statement of OEO Grant, whether such amounts are derived from Federal or non-Federal sources, or whether they are provided in cash or in kind.

(d) "CSA directives" are statements of policy and procedure published in the CSA publications system.

2. *Applicability of conditions to delegate agencies.* These conditions are applicable both to the grantee and to any delegate agency or organization that, pursuant to an agreement with the grantee, undertakes responsibility for any part of the approved program. Such an agreement may be entered into only if (1) the intention to make such a delegation to the particular agency has been set forth in the funding request for this grant action or has otherwise been approved by CSA, and (2) the contract contains all of the provisions found in the approved "Standard Contract Form for Delegation of Program Accounts."

3. *Limitations on expenditure of program funds.* Expenses charged against program funds may not be incurred prior to the effective date of the grant or subsequent to the termination date unless written prior approval has been received from the CSA funding official and may be incurred only as necessary to carry out the purposes and activities of the approved program. Such expenditures may not exceed the maximum

limits shown on the Statement of OEO Grant or those subsequently approved for that approved program, subject to allowable flexibility guidelines published by CSA. All expenses incurred for the approved program must be supported by approved contracts, purchase orders, requisitions, bills, or other evidence of liability consistent with the grantee or delegate agency's established purchasing procedures. Expenses charged against program funds must also be incurred in accordance with CSA directives. Liabilities of the grantee or its delegate agencies to third parties as a result of termination action which are costs of phasing out in accordance with CSA directives or are specifically approved shall be considered proper expenditures of program funds. CSA will determine the disposition of unexpended funds at the termination of the grant.

4. *Limitations on expenditures of federal funds.* Expenditures of funds derived from Federal grant funds must not exceed in any event the amount of the Federal grant shown in the Statement of OEO Grant, (Column 9, OEO Form 314). Moreover, if a minimum non-Federal percentage of program funds is shown in the Statement of OEO Grant (Column 10, OEO Form 314), the portion of the total expenditures of the approved program derived from non-Federal sources, valuated in accordance with CSA Instructions, must not be less than that minimum percentage of the total program funds for the approved program. This requirement must be met for each program account funding period, and should be substantially true for each financial reporting period. Deficiencies of non-Federal share in one program account may be supplied by an excess in other program accounts consistent with applicable CSA Instructions concerning the pooling of non-Federal share. Further, the amount of total program funds derived from Federal grant funds must not exceed the grantee's allowable costs for the approved program which have been or are to be paid in cash.

5. *Property.* No program funds may be expended or costs incurred for the purchase of real property except as in accordance with regulations on the acquisition, ownership, and disposition of personal property as set forth in CSA directives.

6. *Discrimination prohibited.* No person in the United States shall on the ground of race, color, religion, sex, age, or national origin, be excluded from participation in, be denied the proceeds of, or be subject to discrimination under the program approved as a result of this funding request. The grantee and its delegate agencies will comply with the regulations promulgated by the Director of CSA, pursuant to the Civil Rights Act of 1964, and pursuant to the Community Services Act of 1974.

7. *Discrimination in employment prohibited.* In all hiring or employment made possible by or resulting from this grant action, each employer (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin, and (2) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates or pay of other forms of compensation; and selection for training, including apprenticeship. The grantee and its delegate agencies shall comply with all applicable Statutes and Executive Orders on equal employment opportunity and this grant action shall be governed by the provisions of all such Statutes and Executive Orders, including enforcement provisions, as implemented by, but not limited to, CSA directives.

8. *Religious institutions.* The grantee and its delegate agencies shall ensure that any part of the approved program that is conducted by a church or church related institution is entirely non-sectarian in content and purpose, and that CSA directives on grants and delegations to churches or church related institutions are satisfied.

9. *Labor standards.* All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings, and works which are federally assisted under this grant shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a-5).

10. *Patents.* Any discovery or invention arising out of or developed in the course of work aided by the grant shall be promptly and fully reported to the Director of CSA for determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon shall be disposed of and administered, in order to protect the public interest.

11. *Copyrights.* If the grant results in a book or other copyrightable material, the author is free to copyright the work, but CSA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and any material which can be copyrighted resulting from the approved program.

12. *Reports, records, and inspections.* The grantee and its delegate agencies shall submit financial, program progress, evaluation, and other reports as required by CSA directives, and shall maintain such property, personnel, financial and other records and accounts as are deemed necessary by CSA to assure proper accounting for all program funds. The grantee and its delegate agencies and contractors shall permit on-site inspections by CSA representatives, and shall effectively require employees and board members to furnish such information as, in the judgment of the CSA representatives, may be relevant to a question of compliance with grant conditions and CSA directives, or the effectiveness, legality, and achievements of the program. All grant records will be made available to the authorized representatives of CSA or the Comptroller General of the United States, and will be retained for three years after the expiration of this grant unless permission to destroy them is granted by the Director of CSA.

13. *Covenant against contingent fees.* The grantee warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this funding action upon an agreement or understanding for commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant the government shall have the right to annul this funding action without liability or, in its discretion, to deduct from the grant or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as may be legally available.

14. *Suspension and termination.* The Director of CSA may in accordance with published regulations, suspend or terminate this grant in whole or in part for cause, which shall include: (1) Failure or unwillingness of the grantee or its delegate agencies to comply with the approved program including attached conditions, with applicable statutes and Executive Orders, or with such CSA directives as may become generally applicable at anytime; (2) submission by the grantee or its delegate agencies to CSA of reports which are incorrect or incomplete in any material respect; (3) ineffective or improper use of Federal funds by the grantee or its delegate agencies; (4) making any change which significantly impairs the representative character of the grantee's policymaking body or the grantee's capacity to enlist community support; (5) failure of the grantee either to adequately monitor and evaluate program activities delegated to other agencies, or to provide effective guidance to such agencies in carrying out the purpose and activities of the portions of the approved program delegated to them. This grant may also be suspended or terminated in whole or in part in the event the grantee is a Community Action Agency and a new agency is recognized by CSA as the Community Action Agency for all or part of the area served by the grantee in accordance with CSA directives. In such event part of the grant funds and the grantee's or delegate agencies' functions, obligations, records (or copies), authority and property relating to assistance provided to the grantee or its delegate agencies under this funding shall be transferred by the grantee and its delegate agencies to such newly recognized agency. No suspension or termination will effect any expenditures or legally binding commitments made prior to receiving notice of the suspension or termination, provided such expenditures or commitments were made in good faith and not in anticipation of termination and are otherwise allowable. Funds shall not be treated as committed for this purpose solely by virtue of a grantee's contract or other commitment to a delegate agency. Upon suspension or termination, the disposition of unexpended Federal funds and property purchased with program funds will be subject to CSA direction.

15. *Successor authority of Community Services Administration.* By virtue of the Community Services Act of 1974 (Pub. L. 93-644), the Community Services Administration (CSA) is, in all respects and for all purposes, the successor authority to the Office of Economic Opportunity (OEO).

Pursuant to section 601(d)(2) of the Community Services Act of 1974, all references to the Office of Economic Opportunity, in official documents including but not limited to, grant documents and regulations, shall be deemed to refer to the Community Services Administration, as set forth in OEO Notice 6000-3 "Successor Authority to the Office of Economic Opportunity," dated January 15, 1975 and published in Volume 40 of the FEDERAL REGISTER at page 3213 (January 20, 1975).

All references to "CSA Directives" or "CSA Instructions" in these general conditions, and special conditions attached hereto and the grant-making documents themselves shall be read so as to include all regulations issued by the Office of Economic Opportunity and any subsequent regulations issued by the Community Services Administration. Such regulations, whether referred to as "OEO" or "CSA" regulations, instructions or notice, remain in force and are deemed to be the policy statements of the Community Services Administration until superseded, rescinded, or changed.

All references herein to "Statement of OEO Grant", or a portion thereof, are deemed to refer to the document, regardless of form or title, utilized by the Community Services Administration to make grants under the authority of the Community Services Act of 1974.

All references to the Community Services Act of 1974 shall be read so as to include the Economic Opportunity Act of 1964 as amended.

[40 FR 27031, June 26, 1975; 40 FR 44327, Sept. 26, 1975, as amended at 45 FR 64940, Oct. 1, 1980]

APPENDIX B TO SUBPART 1067.5

ADDENDUM TO GENERAL CONDITIONS FOR GRANTS MADE UNDER SECTION 712 OF THE ECONOMIC OPPORTUNITY ACT, AS AMENDED (INCLUDING AMENDMENTS MADE BY THE COMMUNITY SERVICES ACT OF 1974)

These conditions are binding both on the grantee and on any delegate agency under this grant. As used in these conditions, the term delegate agency refers to any agency with which the grantee or the delegate agency enters into an agreement for performance of any portion of the grant program. Venture subsidiaries or agencies receiving only venture capital funds (cost category 2.5) are not considered delegate agencies. This grant action specifically recognizes the following delegate agencies:

1. *Applicability of CSA directives.* Any CSA directives applicable to grants made under section 712 of the Community Services Act of 1974[1] (formerly section 151 of the Economic Opportunity Act) shall be binding on this grantee and any delegate agency until such time as they are specifically revised or superseded by directives applicable to grants made under section 712 of the Community Services Act.

2. *Submission of reports.* Any subsidiary and any individual or organization which receives grant funds or other financial assistance from the grantee or delegate agency shall submit financial, program, progress, evaluation, and other reports as required by CSA and the Office of Economic Development (OED) and shall maintain such property, personnel, financial, and other records deemed necessary by CSA to assure a proper accounting for all grant funds. Decisions made by the grantee or delegate agencies to invest in or to extend financial assistance to any project shall include an agreement between the grantee or delegate agencies and the other parties which effectively requires that the grantee, the appropriate delegate agency, CSA or its successor, CSA contractors performing evaluations of the grant program, and the U.S. General Accounting Office, shall have access to records and information either in writing or through on site inspection as deemed necessary, in the judgment of CSA, for monitoring the effectiveness and legality of the financial assistance.

3. *Review of chief executive officer.* Prior to hiring the Chief Executive Officer the grantee and/or delegate agency shall submit the name and resume of the candidate to OED. The selection of a proposed candidate will be subject to review and comment by OED prior to appointment. OED will have 30 days in which to review and comment on the proposed candidate. However, while seeking a permanent Chief Executive Officer, the grantee may hire, without OED's review, a qualified person on an interim basis for a period not to exceed four months.

4. *Limitation on contracts.* No contract or series of contracts for the performance of any specific task or general service which shall result in an expenditure totaling more than $5,000 in grant funds to any individual or firm in any fiscal year shall be entered into without the prior written approval of OED. Accordingly, the grantee shall submit the following information to OED:

a. A review of the purpose of the proposed contract (or contracts);

b. The time and manner specified for its performance;

c. The breakdown, in the form of a budget, of its costs;

d. A statement of the qualifications and experience of the principal consultants and contractors who will be responsible for its performance;

e. The manner of selection of the consultant(s) or contractor(s) (e.g., sole source, competitive bid, etc.).

5. *Employment contracts.* Any employment contract regardless of cost to which the grantee or a delegate agency is to be a party and which involves the expenditure of grant funds, shall be submitted to OED for review prior to execution. The employment contract shall constitute the entire agreement between the parties; any subsequent amended agreement is also subject to OED review.

6. *Use of grant funds for meals.* No grant funds shall be expended for the cost of meals for employees or officers of the grantee or delegate agency, except when on travel status.

7. *CSA approval of corporate documents.* No funds shall be expended by the grantee, delegate agency, or subsidiaries until the articles of incorporation and by-laws of such entities have been submitted to OED and approved in writing. After initial approval and so long as there is a grant relationship between CSA and the grantee such articles

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[1] All references to the Community Services Act of 1974 shall be read so as to include the Economic Opportunity Act of 1964, as amended.

and by-laws shall not be amended without OED's written concurrence.

8. *Use of venture capital funds.* a. No venture capital funds shall be shifted to other cost categories without prior written approval of OED.

b. Funds for venture capital shall be used to provide financial and other assistance, either directly or indirectly, for the creation, acquisition, preservation and expansion of business ventures, subject to the following terms and conditions:

(1) Except as otherwise provided for by the terms of the grant no venture capital funds shall be used without the prior approval of OED.

(2) For each venture, to obtain the approval specified in paragraph (1), the grantee shall submit to OED a full description of the proposed use of financial or other assistance, including an explanation of how it will further grant purposes. Each description shall include:

(a) Appropriate feasibility studies and cost analyses;

(b) Certified balance sheets and profit and loss statements for the immediately preceding three years or from the commencement of its operation, whichever period is shorter, if funds will be used for the acquisition, preservation or expansion of an existing business venture;

(c) Cash-flow projections and pro forma profit and loss statements and balance sheets estimated on a monthly basis for two years;

(d) The estimated purchase price or annual rent for any proposed purchase or lease of real property, accompanied by an independent appraisal of the property establishing that the proposed purchase price or annual rent is reasonable. (For additional information required in the event real property is to be purchased, see Addendum General Conditions 13, 15, and 16).

(e) Resumes of management team

(f) Articles of Incorporation and By-Laws

c. No grant funds shall be expended on any loan or capital investment project or program without evidence that such funds are not available from other private or public sources on terms that are reasonable and consistent with the goals of this grant. Such evidence shall be kept on file during the grant relationship and for at least three years thereafter.

d. Decisions made by the grantee or delegate agencies to invest in or to extend financial assistance to any project shall include an agreement between the grantee or delegate agencies and the other parties which assures that the maximum feasible benefits shall accrue collectively to the poor residents of the target area.

9. *Issuance of public securities.* There shall be no public issuances of securities by a grantee, a delegate agency, or any project utilizing venture capital funds without the prior approval of OED or its successor. Copies of any registration statement or notification or prospectus or offering circular prepared in conjunction with a public issuance should be sent to OED. Copies of any other documents which the issuer is required to file in connection with any public issuance of securities, whether by Federal securities laws or by state blue sky laws, should also be sent to OED.

10. *Accounting procedures and audit requirement for ventures.* a. In order to ensure that the organization operating the venture has established or maintains a satisfactory accounting system, the grantee shall engage an independent certified public accountant to perform a survey to evaluate and review the adequacy of the accounting system, and shall submit to OED a complete copy of the survey report. This report shall be submitted prior to the expenditure of investment capital and the grantee shall keep a copy on file during the grant relationship and for at least three years thereafter.

b. In each case in which the assurances described in paragraph a, above, are required, the grantee shall also ensure that within three (3) months of receipt of assistance by the venture a preliminary audit survey is made to evaluate and review the adequacy of such accounting system. A copy of such audit survey report shall be promptly submitted to CSA, and the grantee shall keep a copy on file during the grant relationship and for at least three (3) years thereafter.

c. The grantee shall also ensure that within one (1) year of the receipt of assistance, and annually thereafter, an audit will be conducted for any venture which was assisted with grant funds. Where the grantee, directly or indirectly, exercises control over such ventures, it shall be responsible for taking the necessary steps to correct any deficiencies disclosed by such audit (including such action as CSA, based on its review of the audit reports, may direct). A copy of such audit report shall be promptly submitted to CSA and the grantee shall keep a copy on file during the grant relationship and for at least three (3) years thereafter.

d. Additional audit requirements applicable to this grant are contained in OEO Instruction 6801-1.

11. *Manpower training programs.* Though training and counseling may be necessary for target area residents employed in ventures assisted with venture capital funds, every reasonable effort should be made to insure that standards of employee performance conform to generally accepted industry practice. Accordingly, no manpower training activity should be assisted with grant funds unless such activity not only complements, but also provides necessary support for grant assisted ventures. (See section

712(a)(3) of the Community Services Act of 1974.)

12. *Assets acquired with grant funds.* a. Grantees (or delegate agencies) shall have a defeasible property right in all assets acquired with venture capital funds. In connection with its approval of a plan for the expenditure of venture capital funds by the grantee (or delegate agency), CSA will require rights or interests in such assets be reserved to CSA as necessary to ensure that these assets are used in a manner consistent with the Community Services Act of 1974. Notwithstanding this reservation, CSA, in order to encourage participation by firms, individuals, private lending institutions and other governmental agencies in ventures financed in whole or in part with grant funds, may execute those documents necessary to demonstrate that any liens, claims, rights or security interests it may have in assets acquired with grant funds, are subordinate to any liens, claims, rights or security interests of any firm, individual, private lending institution or governmental agency participating in such ventures. This subordination of rights and interests by CSA is dependent upon CSA's determination that grant purposes will be furthered through this action.

b. The grantee or delegate agency may not sell, mortgage, or otherwise encumber stock or any other assets acquired with grant funds without the prior written approval of OED. Funds obtained by the sale, mortgage or other encumbrance of such assets shall be used to carry out projects consistent with the purposes of the grant pursuant to Title VII-A of the Community Services Act of 1974; provided that during the grant relationship no such amounts shall be used without the prior written approval of OED.

c. Nothing in this condition shall be construed as being contradictory to Section 714 of the Community Services Act which says "Capital Investments made with funds granted as a result of the Federal share of the costs of programs carried out under this title, and the proceeds from such capital investments, shall not be considered Federal property. Upon investment, title rights vest in the Community Development Corporation." This condition serves only to enable the Federal Government to meet its responsibility under section 714 to "direct that on severance of the grant relationship the assets purchased continue to be used for the original purpose for which they were granted".

13. *Accounting for income.* The grantee, its subsidiaries, or any delegate agencies performing activities under this grant shall set up separate books for each capital investment project, including loan or loan guarantee programs. The books shall be maintained so that all income accruing to the grantee, its subsidiaries, or any delegate agencies is clearly identified. Income includes:

a. Interest earned on unexpended grant funds which have been disbursed for a program purpose (e.g., the interest earned on grant funds which have been deposited in a minority bank, or interest earned on grant funds placed in a revolving loan fund account). (If grant funds have not yet been disbursed for a program purpose, then any interest must be returned to the Treasury);

b. Capital gains;

c. Profits; and

d. And interest or deferred income (including unrealized appreciation and retained earnings of it and its subsidiaries) derived from the capital investment projects and loan repayments.

All such income and loan repayments shall be the property of the grantee or delegate agency and may be used in a manner consistent with the intent of Title VII-A of the Community Services Act of 1974 and this grant.

14. *Disposition of assets.* a. It may be determined prior to or during the term of this grant action that there will be no subsequent refunding action. If this grant is the final grant, at least 90 days prior to the end of the formal grantee/grantor relationship, the grantee shall submit for CSA written approval a plan for the disposition of the tangible and intangible assets acquired with grant funds and owned or controlled by the grantee, its delegate agency or its subsidiaries, successors and assignees. This plan shall describe procedures whereby these assets shall be dedicated to use consistent with the grant and Title VII-A, and controlled by the grantee or a similar organization accountable to the target area population.

b. If no plan for disposition is submitted or if the plan as submitted is disapproved, in whole or in part, then the grantee shall transfer or assign these assets to such entity(s) as CSA shall direct in order to ensure their continued use in a manner which is consistent with the intent of this grant and of Title VII-A of the Community Services Act of 1974.

15. *Grant termination for cause.* If this grant is terminated for cause pursuant to CSA regulations, all unexpended grant funds shall be returned to CSA. In addition, in the event of such termination all tangible and intangible assets owned by the grantee or by any delegate agencies, which were derived from or acquired by the use of grant funds, shall be transferred or assigned to such entity as CSA shall direct in order to continue an economic development program pursuant to the purposes of this grant and Title VII-A of the Community Services Act of 1974.

[40 FR 27031, June 26, 1975; 40 FR 44327, Sept. 26, 1975, as amended at 45 FR 64939, Oct. 1, 1980]

APPENDIX C TO SUBPART 1067.5

ADDENDUM TO THE GENERAL CONDITIONS FOR GRANTS MADE UNDER TITLE II OF THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED, IN WHICH GRANT FUNDS WILL BE USED AS VENTURE CAPITAL

1. *Applicability of CSA Directives.* These conditions and all CSA policy statements applicable to grants made under Title II of the Economic Opportunity Act of 1964, as amended, shall be binding on this grantee and on any agency or organization with which the grantee contracts for performance of a component of the grant work program. Where a particular CSA directive would be clearly inappropriate to the successful performance of the venture activity, the grantee may request in writing an exception to compliance from the appropriate CSA administering office.

2. *CSA Approval of Corporate Documents.* No funds shall be expended by the grantee or by a contracting organization until the articles of incorporation and the bylaws of these entities have been submitted to the appropriate CSA administering office and have been approved in writing. After initial approval and so long as there is a grant relationship between CSA and the grantee, these articles and bylaws shall not be amended without the written concurrence of the appropriate CSA administering office.

3. *Issuance of Securities.* A contracting organization which is incorporated as a profit-making entity may not issue securities without prior approval of the appropriate CSA administering office. Copies of any registration statement or notification or prospectus or offering circular prepared in conjunction with an issuance of securities should be sent to the appropriate CSA administering office. Copies of any other documents which the issuer is required to file in connection with any issuance of securities, whether by Federal securities laws or by state blue sky laws, should be sent to the appropriate CSA administering office.

4. *Encumbrance of Assets Acquired with Grant Funds.* Neither the grantee nor a contracting organization may mortgage or otherwise encumber stock or other assets acquired with grant funds without the prior written approval of the appropriate CSA administering office.

[45 FR 39849, June 12, 1980]

Subpart 1067.9—Special Conditions When a Community Action Component Is Delegated to a Church or Church Related Organization (CSA Instruction 6441-01)

SOURCE: 44 FR 56577, Oct. 1, 1979, unless otherwise noted.

§ 1067.9-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1067.9-2 Effective date.

May 10, 1971 (CSA Instruction 6441-01).

§ 1067.9-3 Purpose.

To ensure that any component of a community action program which is conducted by a church-related institution is entirely non-sectarian in content and purpose the following special conditions will be applied to any grant under which such an arrangement is intended. The first set of conditions will apply to components involving church-related schools or school systems; the second will apply in the case of all other activities.

§ 1067.9-4 Policy.

These conditions must be incorporated in any contract between a community action agency and a church or church-related organization. In addition, all such contracts must be submitted to CSA for review and approval prior to execution.

§ 1067.9-5 Conditions applicable to the use of grant funds in church-related schools or school systems.

(a) The grantee shall ensure, and shall provide in any contract or other arrangement with the church-related school, schools or school system, that:

(1) None of the grant funds shall be used for the teaching of religion, religious proselytization, or religious worship.

(2) There shall be no religious instruction, proselytization or worship in

connection with any program supported in whole or in part by this grant and conducted outside of normal school hours (such as after school programs, summer-school programs) or conducted for persons who are not participating in the regular curriculum (such as pre-school, adult-education, or a program for dropouts).

(3) In any of the programs described in paragraph (a)(2) of this section admission shall not be based directly or indirectly on religious affiliation or on attendance at a church-related school or other church-related institution. Affirmative steps shall be taken to make known the general availability of such programs in the areas served.

(4) Participation in programs supported in whole or in part by this grant shall not be used as a means of inducing participation in sectarian or religious activities or of recruitment for sectarian or religious institutions.

(5) The text books and other materials used in programs supported in whole or in part by this grant shall be devoid of sectarian or religious content.

(6) Facilities renovated or rented for programs financed in whole or in part by this grant shall be devoid of sectarian or religious symbols, decoration, or other sectarian identification. Other facilities used primarily for such programs shall, to the maximum feasible extent, be devoid of sectarian or religious symbols, decoration, or other sectarian identification.

(7) Grant funds shall not be used in any manner to release funds regularly expended by the school, schools, or school system. For example, grant funds shall not be used to pay in any part costs which would otherwise be incurred by the school, schools or school system in their regular operation.

(b) The grantee will, before executing a contract with any church-related school, schools, or school system, submit the proposed contract to CSA for approval.

§ 1067.9–6 Conditions applicable to the use of grant funds for activities to be conducted by a church or church-related organization.

(a) The grantee shall ensure, and shall provide by contract with any church or church-related institution or organization which is to be delegated the performance of all or part of any component of the approved community action program that:

(1) None of the grant funds shall be used for the teaching of religion, for religious proselytization, or religious worship.

(2) There shall be no religious instruction, proselytization or worship in connection with any program supported in whole or in part by this grant.

(3) Admission to any of the programs supported by this grant shall not be based directly or indirectly on religious affiliation or on attendance at a church, church-related school or other church-related institution or organization. Affirmative steps shall be taken to make known the general availability of such programs in the area served.

(4) Participation in programs supported in whole or in part by this grant shall not be used as a means of inducing participation in sectarian or religious activities or of recruitment for sectarian or religious institutions.

(5) All materials, such as reading materials, used in programs supported in whole or in part by this grant shall be devoid of sectarian or religious content.

(6) Facilities renovated or rented for programs financed in whole or in part by this grant shall be devoid of sectarian or religious symbols, decoration, or other sectarian identification. Other facilities used primarily for such programs shall, to the maximum feasible extent, be devoid of sectarian or religious symbols, decoration, or other sectarian identification.

(7) Grant funds shall not be used in any manner to release funds regularly expended by the church or church-related institution or organization. For example, grant funds shall not be used to pay in any part costs which would otherwise be incurred by the church

or church-related institution or organization in its regular operation.

(b) The grantee will, before executing a contract with any church or church-related institution or organization, submit the proposed contract to CSA for approval.

Subpart 1067.10—CSA Procedures for the Federal Project Notification and Review System (PNRS) (CSA Instructions 6710-3a and 6710-3a CH 2)

Source: 41 FR 28277, July 9, 1976, unless otherwise noted.

§ 1067.10-1 Applicability.

(a) Title II:

(1) This subpart is applicable to applications* for grants under sections 221, 222(a)(5), (7), (12) and 231 of the Community Services Act of 1974 (CFDA Nos. 49.002, 49.005, 49.010, 49.014, and 49.013 respectively) when the funds are administered by the Community Services Administration.

(i) *Exceptions: Applications from Federally-recognized Indian Tribes; and applications or portions of applications for funds under the abovementioned Sections when such funds are for general administration; training and technical assistance for staff development and/or management improvement; and evaluation.

(b) Title VII:

(1) This subpart in its entirety is applicable to applications** or portions of applications** requesting funds under the following sections of Title VII (CFDA No. 49.011) for the purposes specified:

(i) *Section 747.* Planning Grants.

(ii) *Section 712.* Investment capital (budget category 2.5) for specific "community development programs" (as defined in CSA Instruction 6158-3), and "training, public service employment, and social service programs" (as defined in CSA Instruction 6158-3).

(2) Only §§ 1067.10-6 and 1067.10-4(d) are applicable to applications** or portions of applications** requesting funds under the following section of Title VII for the purpose specified:

(i) *Section 712.* Administrative costs (all budget categories other than 2.5), investment capital for specific "business development programs" (as defined in CSA Instruction 6158-3), or investment capital unearmarked at time of application to specific ventures.

(3) **Exception: Applications from Federally recognized Indian Tribes.

§ 1067.10-2 Policy.

(a) CSA will not approve any requests for initial funding, refunding, or major changes in work program or level of assistance from any applicant unless the applicant follows the Project Notification and Review System (PNRS) procedures (See § 1067.10-4) for all programs identified in § 1067.10-1.

(b) In the past OEO Form 394 has been used by Title II grantees to checkpoint with local agencies and officials and with SEOOs. Since an active A-95 review process is a direct duplication of the Form 394 checkpoint procedure, the Form will no longer be required where there is an areawide clearinghouse unless the CSA administering office determines that the applicant's comments are not being circulated to all appropriate public and private agencies in which case the administering office may require additional check-pointing through continued use of Form 394. Also, Title II grantees who wish to continue additional coordination activities with local agencies and local units of government may continue to use the Form 394 on an optional basis.

(c) Effective with the issuance of this Instruction, all applications submitted to CSA will be required to have a SF 424 as a coversheet. (See § 1067.10-4). In addition the SF 424 may be used as the initial notification to clearinghouses where clearinghouses do not require their own forms. (See § 1067.10-4(a).)

§ 1067.10-3 Responsibilities.

(a) *State Governments and Governors.* State governments and Governors may designate State and/or areawide clearinghouses which, among other things, perform functions relating to the coordination of Federal grant program plans. (The Office of

Management and Budget (OMB) has issued, and will periodically update, a directory listing of these designated clearinghouses.)

(b) *Clearinghouses.* The areawide and metropolitan clearinghouse(s) inform specific local governments and agencies, including CSA grantees if they have so requested (see § 1067.10-5) and public agencies charged with enforcing or furthering the objectives of State and local civil rights laws, of any proposed projects from other agencies which would have an impact on their programs. Also, State clearinghouses notify state agencies, such as SEOOs, of any proposed projects which would affect their statewide plans and programs.

(c) *Applicants/grantees.* Applicants are required to notify the clearinghouse(s) of the State(s) and either the areawide or the metropolitan area clearinghouse(s) in which the project is to be located of their intent to apply for CSA funds.

(d) *Community Services Administration*—(1) *CSA Headquarters* is responsible for informing grantees and prospective grantees of the current requirements to notify clearinghouses.

(2) *CSA Regional and Headquarters Administering Offices* are responsible for assuring that:

(i) Grantees are advised of new or redesignated State and/or areawide clearinghouses;

(ii) Grantees seeking initial funding are informed of A-95 requirements and provided copies of SF 424 at the time CSA indicates its willingness to consider their applications;

(iii) Each application has received clearinghouse review where such review is required;

(iv) Each application is accompanied by a completed (Sections I and II) SF 424;

(v) Clearinghouses are notified within seven work days of any major action taken on an application that has been reviewed by the clearinghouses; and

(vi) The appropriate State and areawide clearinghouses have been notified of any application from federally-recognized Indian tribes upon its receipt.

§ 1067.10-4 Procedures.

(a) *Applicant Notification to Clearinghouses of Intent to Apply*—(1) *Who Must Notify Clearinghouses.* Applicants for CSA funds who are seeking initial funding or program year refunding for programs covered by A-95 must provide notification of intent to apply to the appropriate clearinghouses. In addition any grant action made subsequent to a program year refunding which is a major change to the work program and/or a substantial infusion of additional Federal funds in the initial application or is a new project not previously submitted to the clearinghouse also must comply with the notification procedures.

(2) *Timeframe.* (i) Applicants must simultaneously notify both State and area-wide clearinghouses of their intent to apply for CSA funds at least sixty days before the anticipated date of the submission of the final funding application to CSA. This 60-day lead time is necessary to allow each clearinghouse 30 days to consult with State and local agencies and regional/local governments that may be affected by the proposed project, and to submit written comments on the proposal to the applicant; and an additional 30 days, if a clearinghouse chooses, to review the final completed funding application.

(ii) For applicants seeking initial funding, notification to the clearinghouse will only begin after CSA indicates its willingness to consider applications (development of an application may be requested simultaneously or at some future date). For grantees requesting refunding, initial notification should follow immediately upon receipt of the program and funding guidance or other notice from CSA that it is willing to consider refunding.

(iii) OMB Circular A-95 contains a provision allowing Federal agencies to request procedural variations from normal review processes under certain circumstances. CSA will make use of this provision on a case-by-case basis.

(3) *How.* (i) Many clearinghouses have developed notification forms and instructions. Where such forms exist

applicants shall use them to notify clearinghouses.[1]

(ii) Where clearinghouses do not require use of their own forms or formats, applicants have the option of submitting one of the following to the clearinghouses. However, as the SF 424 must accompany every application submitted to CSA it is assumed that most applicants will use the SF 424 as Notice of Intent to Apply.

(A) SF 424, Federal Assistance, with Section I completed PLUS a statement as to whether environmental impact information will be required; OR

(B) A summary of the following:

(*1*) Identity of the applicant agency;

(*2*) Geographic coverage of the program proposed;

(*3*) A brief description of the proposed program including type;

(*4*) Purpose;

(*5*) General size or scale;

(*6*) Estimated cost;

(*7*) Beneficiaries; or

(*8*) Other characteristics which will enable the clearinghouse to identify agencies of a State or local government having plans, programs, or projects that might be affected by the proposed programs;

(*9*) A statement as to whether environmental impact information will be required;

(*10*) The Federal program title and number and agency under which assistance will be sought as indicated in the latest "Catalog of Federal Domestic Assistance"; and

(*11*) The estimated date the applicant expects to formally file its funding request.

(b) *Review by Clearinghouses of Notification.* (1) The clearinghouse may notify the applicant, within 30 days of receipt of notice, of its own or other State or local interests. During this period differences may arise between clearinghouses or particular State agencies or local governments as to the merit and/or designation of the planned project. The clearinghouse may work with the applicant in the resolution of any problems. If differences are not resolved, the clearinghouse may inform the applicant of its desire to review, and its intention to prepare comments to accompany, the completed funding application.

(2) Applications for refunding not submitted to or acted on by CSA within one year after completion of clearinghouse review will be subject to rereview upon request of the clearinghouse.

(c) *Submission of the Completed Application to the Clearinghouse.* (1) When within the initial 30 day period the clearinghouse signs off or indicates that it has no comments regarding the proposed project, the applicant may proceed to submit the final funding application to CSA without further delay. In such cases the applicant is not required to submit a copy of its funding application to the clearinghouse. However, the clearinghouse may request an information copy.

(2) However, if within the initial 30 day period the clearinghouse asks to review the final application, the applicant will submit a copy of the funding application to the clearinghouse. In such cases, the clearinghouse(s) shall have an additional 30 days to submit their formal comments on the subject application. If the applicant failed to submit to the clearinghouse an initial notification of its intent to apply for CSA funds and submitted only a completed application, the clearinghouse shall have a full 60 days to review and submit comments on the application.

(3) It should be noted that areawide clearinghouses must submit to applicants any written comments received from other jurisdictions or agencies or parties when the comments are at variance with the clearinghouse comments. They also must list others who were solicited and from whom they received comments.

(d) *Submission of SF 424's and Clearinghouse Comments to CSA.* Beginning with the effective date of this Instruction, the applicant will submit to the appropriate CSA Regional or Headquarters administering office a SF 424 with each application for initial funding, program year refunding, major change to work program and/or level of Federal assistance, and new projects regardless of whether or not the program is covered by the A-95 process. Grant applications will be unacceptable if not accompanied by the completed SF 424. (See Appendix for a copy of SF 424 with instructions for completion including instructions specifically designed for applicants for CSA funds).

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[1] In accordance with OMB Circular A-95 (Revised) private non-profit applicants are not required to include confidential information concerning the financial status or structure or the personnel of their agency even though this information might be required to be sent to CSA as part of the funding process.

(1) For programs not covered by the A-95 process or for which CSA has received an exemption, the applicant will complete information required in Section I of the SF 424 and indicate "not applicable" in Section II, Item 22.b.

(2) For programs covered by the A-95 process, the applicant will complete all information required in Sections I and II of SF 424 and attach any comments or recommendations received from the clearinghouse(s) along with a statement that such comments have been considered prior to submission of the application. In addition, the applicant will include in Section IV of SF 424 a position statement on any conflicts that have not been resolved between the clearinghouses and the applicant.

NOTE: It would be in the applicant's best interest to notify CSA immediately if any comments have been received or are anticipated which recommend not funding the application.

(i) Applications that do not carry evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant to comply with A-95 procedures.

(ii) If a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the administering office will consult with the agency assisting the referenced project prior to acting if the administering office plans to recommend approval of the project.

(iii) CSA will not accept the grant for processing until the clearinghouse comments have been received or until the final 30 day period has elapsed.

(e) *Notification to Clearinghouses by CSA of Major Grant Actions.* (1) Within seven working days of any major action taken on an application, i.e. award, rejection, deferral, return for amendment, or withdrawal, the appropriate CSA Regional Office or Headquarters office will notify the clearinghouse(s) which reviewed the application. In addition if a clearinghouse recommended against the funding of the application and CSA has decided to award the grant, CSA will include in Section IV of SF 424 a statement of explanation to the clearinghouse.

(2) CSA will notify the clearinghouse(s) by completing Section III of the SF 424 and returning the form, along with any explanatory attachments, to the clearinghouse(s).

§ 1067.10-5 CSA grantee participation in A-95 coordination process.

Since OEO Form 394 is no longer required, CSA reminds those SEOOs who currently are not receiving applications for CSA-funded programs for review through the clearinghouse, that they inform the clearinghouse of their interest in receiving these applications for review. CSA grantees, particularly CAAs and SEOOs, should actively seek to review, in addition, applications for Federal assistance from other agencies in their clearinghouse area for programs included in the A-95 process. (See attachments C and D to Circular A-95). Review of notifications and applications for Federal funds should be directed to those programs which could have an impact on the poor.

§ 1067.10-6 Section 712—On-going and post-grant coordination.

(a) Because of the nature of the Section 712 Special Impact Program and the funding process followed by CSA's Office of Economic Development for community development corporations (CDCs) under Section 712, there is limited opportunity for, or value to, clearinghouse review of CDC grant applications prior to funding by CSA and, therefore, the A-95 process is applicable only to certain Title VII grants. (See § 1067.10-1). For example:

(1) Once a CDC has received its initial funding from CSA through a planning grant (which is subject to clear-

inghouse review), the basic issue of the community's need for the CDC has been resolved. Therefore, subsequent refundings of the CDC's central administrative budget are exempted from clearinghouse review.

(2) Since CDCs are refunded for two-year periods, much of the investment capital funding requested in refunding applications is not earmarked to specific ventures; only in the subsequent two years, following grant approval, are specific plans for most ventures developed and submitted to CSA for approval. Accordingly, there is little in the CDC's investment capital budget for clearinghouses to review prior to grant approval.

(3) The bulk of the CDC's proposed ventures, whether specified in the refunding application to CSA or identified and developed after grant approval, fall into the "business development program" category, and are accordingly exempt from clearinghouse review because of their proprietary nature. Most of the feasibility data for such ventures, whether submitted to CSA as part of a refunding application or subsequently, could not be released to the clearinghouses.

(b) Accordingly, only that small portion of a CDC's refunding application which is earmarked for specific ventures in the "community development" and "training, public service employment, and social services" categories is appropriate for review by the clearinghouse prior to funding.

(c) Even some data related to community development ventures, such as land acquisition plans and costs are exempted from clearinghouse review due to the proprietary nature of the data.

(d) Despite such limitations, it is the policy of CSA that CDCs coordinate their programs with local governments and related private agencies and organizations, and that CDCs develop meaningful mechanisms with their local clearinghouses for insuring such coordination on an ongoing basis. Such coordination should include, at a minimum, (1) periodic discussions of the CDC's overall program and objectives, and (2) appropriate reviews, prior to CSA release of funds (though generally not prior to grant approval), of non-proprietary venture plans.

(e) Each CDC, including planning grantees, must include in its next funding application submitted to CSA after 60 days from the effective date of this subpart, a copy of an agreement signed by the CDC and the appropriate areawide or metropolitan clearinghouse(s) which specifies how this required ongoing and post-grant coordination shall be implemented. All future grant applications and post-grant venture feasibility proposals must include evidence that the required coordination, as provided in the signed agreement, has in fact taken place.

EDITORIAL NOTE: Section 1067.10-6 was suspended in part at 42 FR 29873, June 10, 1977.

§ 1067.10-7 SF 424—Availability.

An initial supply of SF 424, Federal Assistance, will be distributed to all grantees. It should be noted that CSA has overprinted the SF 424 to provide additional information for use of its grantees and administering offices. Therefore supplies of SF 424 should be acquired from CSA only. When the initial supply has been exhausted additional forms may be obtained by writing to: CSA Publications and Distribution Center, 5458 3rd Street NE, Washington, DC 20001.

Subpart 1067.16—Amending a Grant Under Title VII of the Community Services Act (CSA Instruction 6710-7)

SOURCE: 41 FR 26688, June 29, 1976, unless otherwise noted.

§ 1067.16-1 Applicability.

This subpart applies to all community economic development grants under Title VII of the Community Services Act of 1974.

§ 1067.16-2 Definitions.

(a) *Amendment.* Any budgetary or programmatic change in a grant which requires prior CSA approval and which is not a refunding.

(b) *Refunding.* An extension of an existing grant for (1) more than four months beyond its current termination date which obligates additional CSA funds, or (2) more than 12 months even if no additional CSA funds are obligated.

§ 1067.16–3 Purpose.

This subpart identifies the kinds of budgetary and programmatic changes in Title VII grants which constitute amendments and prescribes the procedures for requesting prior approval from CSA's Office of Economic Development (OED) for such amendments. Procedures for requesting OED approval for grant extensions which constitute refundings may be found in § 1067.15-1 through § 1067.15-12 (CSA Instruction 6710-6). Grantees who are in doubt as to whether proposed grant changes require prior OED approval or whether the procedures in this subpart or in § 1067.15-1 through § 1067.15-12 (CSA Instruction 6710-6) should be followed should consult with the OED project manager for the grant.

§ 1067.16–4 Grant changes requiring prior OED approval.

Grant changes which constitute amendments, and which therefore require prior OED approval, fall into two basic categories; those involving changes in the grant program and those involving changes in the grant budget.

(a) *Programmatic Changes which Constitute Amendments.* (1) Basic changes in the overall strategy, objectives, milestones, implementation plan, or major activities of the project as approved by OED.

(2) Significant changes in the number or type of participants or beneficiaries.

(3) Changes in the target area served (if any) under the grant.

(4) Changes in delegate agencies, if any.

(5) Changes in the grantee's articles of incorporation or by-laws.

(6) Changes in or waiver of grant conditions.

(7) Uses of Investment Capital funds for purposes other than those approved by OED or than as provided in a venture autonomy agreement approved by OED or in CSA Instructions.

(8) Changes in the duration of the approved funding period or in the length of time the project will operate.

(9) Restoration of personnel positions or program elements specifically disapproved by OED, or deletion of positions or program elements specifically added by OED, as specified on the OEO Form 325c or special conditions attached to the grant.

(b) *Budgetary Changes Which Constitute Amendments.* (1) Changes which will increase the CSA-funded program costs (i.e., the approved grant budget as shown in Column F (1) of the CSA Form 325) for the current funding period, regardless of whether such increased cost will:

(i) Require increased (i.e., supplemental) OED funds; or

(ii) Require no additional OED funds because of the availability of larger than anticipated unexpended balances from prior funding periods

NOTE: The availability of unexpended funds from prior funding periods does not constitute the authority to spend them.

(2) Changes in the expenditure rate for continuing costs such that total grant funds will be expended prior to the termination date of the current grant, thereby necessitating refunding (where applicable) prior to the scheduled date.

(3) Changes in the expenditure rate for continuing costs such that even if total funds will not be expended prior to the termination date of the current grant the annualized costs in subsequent funding periods will be significantly higher.

(4) Any increase or decrease in the OED-approved budget for cost category 2.5, Investment Capital, by shifting funds from or to other cost categories.

(5) Any increase in the OED-approved budget for cost category 3.0, Indirect Costs, where applicable.

(6) Any initial salary, or any increase in salary, for any position which exceeds CSA limitations on salary increases or CSA wage comparability standards as prescribed in (OEO Instruction 6900-01 and 6900-02).

(i) (NOTE: even if OED has approved a given salary level for a position, depending upon his/her prior salary levels a given incumbent of that position may be proscribed from receiving that maximum salary by OEO Instruction 6900–01).

§ 1067.16–5 Changes allowable without OED approval.

Except as provided in § 1067.16–4 or as prohibited by CSA grant conditions or regulations, Title VII grantees may make other programmatic and budgetary changes in their approved grants without prior OED approval (in accordance, of course, with their own bylaws, published personnel policies, regulations, etc.). Such changes include: (a) Creation or abolishment of staff positions, or changes in duties.

(b) Increases or decreases in salaries for individual positions.

(c) Increases or decreases in budget cost categories 1.1–2.4 and 2.6, or decreases in cost category 3.0, by shifting funds among such cost categories.

§ 1067.16–6 Submission of amendment requests to OED for approval.

(a) Any programmatic or budgetary change constituting an amendment (see § 1067.16–4) may *not* be made by a Title VII grantee without prior OED approval. Such approval must be in writing and may be given only by the Director of OED or his Deputy (the only OED officials authorized to approve Title VII grants). Oral "authorization" by any OED employee or written "authorization" by any OED employee other than the director or his deputy shall not constitute OED approval. Moreover no grant amendment may become effective until the date the written approval is signed.

(b) The documentary requirements for amendment requests are relatively simple. An amendment request consists of from one to four numbered forms as follows:

(1) OEO Form 315a Grantee Quarterly Financial Report (requests for nocost extension in excess of 4 months).

(2) CSA Form 325b, Request for Amendment to Grant (all requests).

(3) CSA Form 325, Budget Summary (requests for budgetary changes).

(4) CSA Form 325a Budget Support Sheets (requests for budgetary charges).

(c) Copies of these forms may be found in Appendix A[1] to this subpart.

(d) An original and seven copies of *all* amendments requests, regardless of the OED division that monitors the projects, should be mailed to:

(1) Program Management and Support Division, Office of Economic Development, Community Services Administration, 1200 19th Street NW., Washington, DC 20506.

(e) Distribution of copies to the OED project manager and other appropriate CSA/OED personnel will be handled by the Program Management and Support Division.

(f) Specific instructions on the preparation of these forms are provided in paragraphs (f)(1) through (4) of this section:

(1) *OEO Form 315a, Grantee Quarterly Financial Report.* See CSA Instruction 6807–2.

(2) *CSA Form 325b, Request for Amendment to Grant.* This form is used for all amendment requests. Where the request involves no budgetary changes, the CSA Form 325b is the only form required. The form is self-explanatory; it provides essentially for a narrative description of the programmatic and/or budget changes requested. Blank sheets should be used to complete any continuation pages. If the amendment involves changes in the grantee target area, by-laws, etc., appropriate documents such as maps, new proposed by-laws, etc., should be attached to the CSA Form 325b.

(3) *CSA Form 325, Budget Summary.* This form is used when the requested amendment involves an increase in the total program cost (whether or not supplementary funds are required), an increase or decrease in the Investment Capital cost category, an increase in the Indirect Cost category (if applicable), or an extension of the funding period without additional funds (a "no-cost extension") for four to twelve

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[1] Not filed with the Office of the Federal Register. Forms available from the Community Services Administration.

months beyond current termination date

NOTE: no-cost extensions of four months or less require only the CSA Form 325b; no-cost extension of more than 12 months are refundings, subject to CSA Instructions 6710-6).

Detailed instructions on how to complete CSA Form 325 for amendment requests may be found in CSA Instruction 6710-8.

(4) *CSA Form 325a, Budget Support Sheets (Parts I and II).* (i) This form will normally be used in any amendment request involving an increase in program costs (whether or not supplementary funds are requested), or a no-cost extension for more than four months. It may even be necessary for certain requests to shift funds among budget cost categories. However, there may be fairly simple amendment requests where the necessary budgetary back-up justification can be provided directly in the narrative on the CSA Form 325b, in which case the CSA Form 325a will be unnecessary.

(ii) Where the CSA Form 325a is used, it will provide the detailed cost basis for each budget cost category affected by the requested amendment. The figures on the CSA Form 325a will then be summarized, by cost category on the CSA Form 325. Detailed instructions on how to prepare grant budgets and CSA Form 325a may be found in CSA Instruction 6710-8.

§ 1067.16-7 Amendment approval/disapproval and post-approval requirements.

(a) Upon receipt of an amendment request it will be reviewed by the appropriate OED staff and either approved or disapproved. If the request is disapproved, the "Disapproved" box will be checked on the bottom of the CSA Form 325b, and the form will be signed and dated by the OED director or deputy director and returned (together with any supporting forms and documents) to the grantee.

(b) If the request is approved, the procedure followed by OED will depend on the nature of the amendment request, as follows:

(1) *Amendments Which Neither Obligate New Funds Nor Extend the Grant Period.* OED approval will be indicated by checking the "Approved" box on the bottom of the CSA Form 325b, and by signing, dating, and returning the form (together with any supporting forms and documents) to the grantee. If any modifications are made in the amendment as approved, such modifications will be indicated on the CSA Form 325b or on attached conditions or explanatory materials. If the amendment involves a budgetary change, OED will complete Column F of the CSA Form 325 submitted by the grantee with the amendment request and will return the 325 along with the 325b to the grantee. The CSA Form 325, with Column F completed, will now constitute the official, approved grant budget as amended.

(2) *Supplemental Grants and No-Cost Extensions.* OED approval of grant amendments involving the obligation of additional funds or extending the funding period beyond the current termination date is indicated in the same way as the initial grant or refunding, by executing a CSA Form 314, Statement of CSA Grant. For this group of amendments OED approval is not shown on the CSA Form 325b, and that form is therefore not returned to the grantee. If the approved amendment involves a supplemental grant, the amount of the *new* funds awarded will be shown on the CSA Form 314 (not the total grant as amended). If the amendment is a no-cost extension, the CSA Form 314 will show zero (0) funds awarded but will indicate the new, extended termination date for the grant. If the amendment both supplements *and* extends the grant, the CSA Form 314 will indicate both the amount of new funds awarded and the new, extended termination date. For supplemental grants and no-cost extensions of four to 12 months, the CSA Form 325, with Column F completed by OED, will be attached to the CSA Form 314 to indicate the new revised budget (for either the current grant period as amended or for the new extended period) as approved by OED. For no-cost extensions of four months or less, the grantee was not required to submit a CSA Form 325 and therefore no such form will be attached to the CSA Form 314. If OED approval of the amendment is contingent on certain conditions or modifica-

tions, special conditions or an explanation of program or budget changes will be attached to the CSA Form 314.

(c) Following receipt by the grantee of a signed CSA Form 325b approving an amendment which neither obligates new funds nor extends the grant, the grantee need take no further action, unless the amendment was approved subject to certain conditions requiring action by the grantee. Following receipt by the grantee of a signed CSA Form 314 approving a supplemental grant or no-cost extension, the grantee must sign the CSA Form 314, as in the case of the initial or refunding grant, and return it to OED to signify official acceptance of the grant or extension. If any special conditions are attached, the grantee must also take such action as is indicated.

Subpart 1067.17—Preparing a Budget for a Title VII Grant Under the Community Services Act (CSA Instruction 6710-8)

SOURCE: 41 FR 26689, June 29, 1976, unless otherwise noted.

§ 1067.17-1 Applicability.

This subpart applies to all applications for community economic development grants under Title VII of the Community Services Act of 1974.

§ 1067.17-2 Purpose.

This subpart prescribes the requirements and procedures for preparing a budget for Title VII applicants.

§ 1067.17-3 Preparation of budget forms for grant action.

(a) Budgets must be submitted for the following types of grant actions:

(1) Initial and Refunding Grants. See CSA Instruction 6710-6.

(2) Budget Amendments. See CSA Instruction 6710-7.

(b) CSA Form 325, Budget Summary, is required to describe the proposed budget. The budget detail should, in most cases, be presented on CSA Form 325a, Budget Support Sheet. Salaries and wages are listed in Part I of the CSA Form 325a, and other expenses are listed in Part II. They should be grouped by the following budget categories:

BUDGET CATEGORY

(1) 1.1 Salaries and wages.

(2) 1.2 Fringe Benefits.

(3) 1.3 Consultants and Professional Services.

(4) 2.1 Travel.

(5) 2.2 Space Costs and Rentals.

(6) 2.3 Consumable Supplies.

(7) 2.4 Lease and Purchase of Equipment and Property.

(8) 2.5 Investment Capital.

(9) 2.6 Other Direct Costs.

(10) 3.0 Indirect Costs.

§ 1067.17-4 CSA Form 325a, Budget Support Sheet (Parts I and II).

(a) This form will be used in all initial and refunding grants and normally in any amendment request involving an increase in program costs (whether or not supplementary funds are requested) or a no-cost extension for more than four months.

(b) It may even be necessary for certain amendment requests to shift funds among budget cost categories. However, there may be fairly simple amendment requests where the necessary budgetary back-up justification can be provided directly in the narrative on the CSA Form 325b, Request for Amendment to Grant, in which case the CSA Form 325a will be unnecessary.

(c) The CSA Form 325a should be completed before CSA Form 325, detailing the cost basis for each budget cost category. Under Part II more than one category may be shown on the same page if space allows. Additional copies of the 325a should be used as continuation sheets to complete Part II (or in unusual cases where the number of personnel exceeds the number of lines on the form to complete Part I). Once the 325a is completed, the totals should be carried over to column D or E, depending on the type of grant action, of section I on the 325.

(1) *Part I (Salaries and wages: Budget category 1.1)*. Items 1, 2, and 3 are selfexplanatory. Under items 4 and 5 enter the salary, wage or the valuation of services of all paid employees and volunteers participating in the program.

(i) *Paid personnel.* (A) All salaries of grantee employees paid with CSA project funds must be established as a part of a structured salary plan which sets salaries or salary ranges for each position or group of positions based on the responsibilities of the position, its relationship to other positions, and the salaries of comparable positions in other public or private non-profit agencies.

(B) Any person hired to fill a CSA funded position must be paid at a rate no higher than the rate established for that position in accord with most appropriate local comparability or at a rate comparable to that paid for similar positions in the community from which the applicant was hired. (The grantee should have a record of the comparability data and be able to produce such upon request by CSA). For salaries in excess of $15,000 per year, comparability data should accompany the application. See OEO Instruction 6900-02.

(C) Salaries entered on the 325a are maximums. Applicants are cautioned that particular incumbents of any given position may be prescribed from receiving such maximums by the provision of OEO Instruction 6900-01, which limit entry salaries or salary increases to 20% or $2,500, whichever is smaller, of an individual's prior annual salary.

(D) A separate entry should be made on the 325a, item 4.A for each different position title. If two or more employees are employed in identical positions, only one entry should be made in 4.A with the number of employees in the position shown in parentheses after the position title. The entries in 4.B and 4.C should be the man-months and salaries for an employee in the respective position in 4.A multiplied by the number of employees in that position.

(E) On the Budget Support Sheet, part-time employees should be shown separately. Do not list two employees each working half a year as one employee working full-time. Where a position is part-time the fraction of full-time employed (e.g. half-time or one-third time) should be shown in parentheses after the position title. The number of man-months shown for a part-time position should in all cases be based on full-time employment. For example, a half-time employee working for an entire year is considered to work six man-months.

(ii) *Volunteers.* If volunteer workers are going to participate in the program, their time may be valued for the purpose of calculating non-Federal share. Valuation methods are prescribed in §§ 1068.9-1 through 1068.9-5 (OEO Instruction 6802-1a). A person should be treated as a volunteer only if he receives no compensation from anyone for work in the program. All volunteer positions should be entered in item 5 of the 325a. When an employee is paid but an employer other than the grantee furnishes the services, he should be listed under item 4 of the 325a and his services valued in 4.E at his regular rate of pay, provided these services are in the same skill for which he is normally paid. This would be the case, for example, if a private law firm assigned an employee to work one day a week in a CSA funded CDC office.

(2) *Part II (Budget support data: Cost categories 1.2-3.0).* (i) Estimated costs or valuations for all projected program needs, other than salaries, wages and volunteer services are to be entered in this part.

(ii) Items 1, 2, and 3 are self-explanatory.

(iii) For each budget item enter:

(A) Its cost category number (see section below on cost categories for further guidance) under column A.

(B) A description of the item and its basis for valuation under column B (NOTE: For items under Cost Category 2.5—Investment Capital the basis for valuation is not required. Only identify, to the extent possible, the ventures or types of ventures to be invested in, including revolving loan or loan guarantee funds, where applicable. For all entries in other cost categories show how the Federal and non-Federal estimates were numerically derived. See sections below on cost categories for further guidance.)

(C) The Federal share of its estimated cost under column C.

(D) The non-Federal share of its estimated cost or valuation, under column D.

(iv) All budget items under Part II are to be grouped under the following cost categories:

(A) *Cost category 1.2: Fringe benefits.* (*1*) This category includes not only such items as health insurance, life insurance, and retirement contributions, but also workmen's compensation, unemployment taxes, and social security taxes.

(*2*) If fringe benefits shown are a percentage of total compensation, the applicant should identify each benefit and its share of the overall percentage figure, e.g., employer's contribution for social security.

(*3*) Fringe benefits must cover at least social security and workmen's compensation. Other options which may be included in fringe benefits are health insurance, life insurance, and retirement. However, when these fringe benefits do include the added options, the options should be equitable to both high and low salaried employees. Plans which are only affordable by high salaried people should not be acceptable in CSA funded anti-poverty programs. A 15% fringe total is average for Title VII grantees.

(B) *Cost category 1.3.* Consultants and Professional Services. (*1*) This category includes legal fees, accountants' fees, consultants' fees, and the like.

(*2*) A reasonable percentage of the budget (depending on specific programs and need for training) may be set aside for consultant and professional services. The two most important areas which must be covered (whether with Federal or non-Federal funds) are audits and legal fees.

(*i*) *Audits.* CSA grant funds may not be used to pay for more than one audit annually, except where CSA requests in writing additional audits. For detailed CSA audit requirements see OEO Instruction 6801-1. Generally, the cost of an audit will depend on the size of the grant, whether or not there are any delegate agencies, where the records are located (in one place or scattered) and how well the grantee's accounting procedures were set up. Audit costs will also vary in different localities. A cost of $3,000-$5,000 for an audit on a $1 million grant is considered reasonable. The grantee may wish to talk with several CPA's in the area before selecting the contractor to insure the CPA's estimate is fair. For Title VII grantees which have ventures in addition to administrative funds to audit, the cost of the audit will be higher.

(*ii*) *Legal fees.* Legal fees are paid on a case-by-case basis. Title VII grantees' legal fees average $2,000-$4,000 per year.

(*iii*) *Other consultant service.* May include board training, staff training, management training, feasibility studies and surveys. In estimating the other consultant costs the following should be considered: Number of days, daily fee rate, cost of transportation, and per diem. Normally $100 per day is the maximum daily fee permitted. However, in view of the highly technical specialists frequently required in certain ventures and business planning, fees in excess of $100 per day are allowable for certain Title VII grantees under conditions described in the general or special conditions to such grants. Where such higher fees are allowable an average of $150 per day is usually quite adequate.

(C) *Cost category 2.1: Travel.* (*1*) Cost of travel should be broken down in Part II of the 325a in terms of travel within grantee's target area, and travel outside of the area. Items covered should include number of employees or board members expected to travel, number of miles at × cents a mile, or number of trips outside target area and average cost of trip and per diem. See example below:

(*i*) Number of travellers × number of miles × number cents per mile = cost of travel in target area.

(*ii*) Number persons travelling × number trips per person × average cost per trip (air fare + per diem + other costs—taxi, phone, etc., usually $10 per day per person is adequate) = cost of travel outside target area.

(D) *Cost category 2.2: Space costs.* (*1*) Projects located in urban areas will normally have to spend more money per square foot of space than projects located in rural areas. The Office of Economic Development can provide to grantees upon request estimates for the cost per square foot of space in all cities in the country which GSA uses

best copy available

as a guideline in determining reasonable costs.

(*2*) GSA estimates that approximately 150 square feet of space as an average is needed for professional employees. For clerical positions approximately 60-75 square feet of space is needed per person plus file space. In general, an average of 105 square feet per person is a reasonable allotment of space. This does not include meeting rooms, etc. Space costs are determined by multiplying the number of employees × square feet per person × the cost per square foot of the space. The cost of space per square foot normally includes maintenance and utility charges. Grantees should generally not enter into a lease where these charges are not included. An exception might be made for grantees who own maintenance companies and may want to channel this money into their own businesses. In these cases, the cost per square foot of space should be reduced to accommodate these charges. Separate charges for maintenance should be accounted for under cost category 2.6—Other Direct Costs.

(*3*) It is also recommended that a grantee take a lease for the period of the grant with an option to renew. A short lease which would expire during the course of the grant period may cause the grantee to have to move. A lease longer than the period of the grant may cause legal problems in the event the grantee does not have funds to continue.

(E) *Cost category 2.3: Consumable supplies.* Consumable supplies include desk top items—pens, pencils, paper, cellophane tape, staples, etc. If a grantee publishes a newsletter or if a support grantee provides a service requiring frequent contact with other grantees through the mails, the costs will be higher than average.

(F) *Cost category 2.4: Lease and purchase of equipment and property.* The rule of thumb to use in determining whether or not to lease or purchase equipment and property is: If 3 years' leasing cost is more than the purchase price plus servicing costs, it is more economical to purchase the equipment. If a grantee is leasing equipment, it frequently is an advantage to do so with the option to buy.

(*1*) Proposed purchases of property with a unit cost of more than $500 must be specifically approved by OED. Such purchases should be itemized in Part II of the 325a.

(G) *Cost category 2.5: Investment capital.* (*1*) This category includes such items as transportation of things, repairs, utilities, telephone, postage, insurance, bonding, etc.

(*2*) This category also includes stipends which may be paid to program beneficiaries to support them during their participation in a program.

(*3*) Dues for membership of the grantee in professional organizations may be included in this category, but only if the grantee's membership can be shown to be related to the purposes of the CSA grant. Dues paid for individual memberships, as contrasted with agency memberships, in professional organizations will not be allowed.

(*4*) Bonding should be secured in the aggregate amount of $25,000 for persons authorized to sign or countersign checks or disburse sizable amounts of cash. (See OEO Instruction 6809-01), and the costs for bonding included in this category.

(H) *Cost category 3.0: Indirect costs.* (*1*) The indirect costs of a project are those costs incurred by an organization for the joint benefit of the approved CSA program activity and other objectives, but not readily identifiable with the CSA program itself—as in the operation and maintenance of buildings or in the payment of utility costs or administrative salaries.

(*2*) CSA funds are only provided for indirect costs applicable to research or demonstration projects conducted by institutions of higher education, State and Local governments, hospitals and other non-profit institutions. When a claim is made for indirect costs, the basis for the indirect cost rate must be explained in detail. If the applicant organization has negotiated an indirect cost rate with another Federal agency, the applicant should include an attachment to the CSA Form 325 showing the rate, Federal agency and date negotiated. CSA will review this established indirect cost rate and determine its acceptability.

(*3*) The provisional approval by CSA of an indirect cost rate in a budget is subject to final negotiation and/or adjustment based upon an audit.

[41 FR 26689, June 29, 1976, as amended at 45 FR 64940, Oct. 1, 1980]

§ 1067.17-5 CSA Form 325, budget summary.

This form will be used in all initial and refunding grants and all budget amendments.

(a) *Initial Grants.* Applicants for initial grants should complete only items 1, 2, 3B, Columns E(1) and (2) of Section I, and item 1 of Section II on the CSA Form 325. Where the applicant has been informed that non-Federal share is not required Column E(2) should be left blank.

(b) *Refunding Grants.* Applicants for refunding should complete items 1 through 3 Columns C(1) and (2) and E(1) and (2) of Section I, and item 1 of Section II of the CSA Form 325. Where non-Federal share is not required Columns C(2) and E(2) should be left blank. The figures in Column C should be taken directly from Column F of the CSA Form 325 of the last previous OED grant or amendment action. Any adjustments within the grantee's flexibility should be included. The figures in Column E for refunding actions should reflect the total budget authority requested which may be greater than the amount of new funding requested if the grantee has unexpended balances from the current grant. The figures in Column E should not be reduced by the amount of such unexpended balances. The most recent OEO Form 315a, Quarterly Financial Report, Support Data Sheet, must be attached to the 325 as support for the amount of unexpended funds claimed in Block 3D.

(c) *Budget Amendments.* For all categories of amendments 1, 2, 3.A, and 3.C on the CSA Form 324 are self-explanatory. Columns C (1) and (2) should show the safe figures appearing in Columns F (1) and (2) of the last previous CSA Form 325 approved by OED (unless adjusted by the grantee within the flexibility), and Section II should be omitted. Instructions for completing items 3.B and 3.D and columns D and E vary depending on the nature of the amendment request, as follows:

(1) *Increase in Total Program Costs—No Additional Funds.* This type of amendment is required when the grantee has previously underestimated, at the time of the last refunding, the amount of unexpended CSA funds, and now is requesting authority to use those unexpended funds. Item 3.B should indicate the beginning and ending dates of the current funding period. Item 3.D should indicate the amount of unexpended CSA funds at the end of the prior funding period above and beyond the amount of CSA funds previously estimated by the grantee to be unexpended. For example, if the grantee previously, at the time of refunding, estimated unexpended funds to be $20,000, and the actual unexpended balance was $50,000, the figure in Item 3.D should be the difference, or $30,000. In item 3.D cross out the word "current" and substitute "prior". Column D should be completed so that the total of Column D(1) should equal the amount in item 3.D, with the total additional budget authority requested allocated to one or more cost categories. Column E should be a total, by cost category of Columns C and D.

(2) *Increase in Total Program Costs—Supplementary Funds.* (i) The beginning date in item 3.B should be the beginning date of the current funding period. If the amendment request is to supplement the current grant without extending the funding period beyond the current termination date, the ending date in item 3.B should be the termination date of the current funding period. If the request is to both supplement and extend the grant, the ending date in item 3.B should be the ending date of the requested extension.

NOTE: If the period of extension exceeds four months refunding application procedures should be followed.

(ii) Item 3.D will normally be left blank, unless the grantee is both requesting authority to use unexpended funds and requesting additional new funds as well, in which case item 3.D will be completed as in section (i) above. Columns D (1) and (2) should be completed to show, by cost category, the amount of additional budget authority requested. Where item 3.D has been left blank, the amount of the supplementary funds requested will equal the additional budget authority requested; where unexpended funds have been shown in item 3.D, the difference between the additional budget authority requested and the unexpended funds. Columns E (1) and (2) will be the totals of Columns C(1) and D(1) and of C(2) and D(2), respectively. If an extension of the funding period is being requested in addition to supplementary funds, the number of months of operation shown in Column E should be the total of the current funding period and the extension period.

(3) *Shifts between cost categories.* (i) Sections 1067.16-1 through 1067.16-7 (CSA Instruction 6710-7) provides instructions as to the flexibility which each grantee has in shifting funds between cost categories. For shifts in excess of that flexibility a budget amendment request is required. The beginning and ending dates in item 3.B should be the beginning and ending dates of the current funding period. Item 3.D should be left blank. Column D should show the requested increase or decrease in cost category 2.5, Investment Capital, or (for those few research or demonstration grants where indirect costs have been approved) the requested increase in cost 3.0, Indirect Costs and the offsetting decreases in one or more other cost categories.

(ii) Increase should be designated with plus (+) signs; decreases with minus (−) signs. The total Column D should be zero (0), since the total increases will be offset by the total decreases. Column E should be a total, by cost category, of Column C and D. The total for Column E will be the same as the total for Column C.

(4) *No-cost extensions of four to twelve months.* (i) Normally, when the funding period of a grant is extended for more than four months beyond its current termination date the extension is considered a refunding, subject to the requirements of § 1067.15-1 through § 1067.15-12 (CSA Instruction 6710-6). However, since no-cost extension from four to 12 months involve the obligation of no additional funds and extend the grant for periods shorter than a normal refunding period, the documentary and procedural requirements applicable are those of an amendment. No-cost extensions of more than 12 months are subject to refunding procedures.

(ii) Since a no-cost extension of four to 12 months is in effect a refunding, the CSA Form 325 that accompanies this form of amendment request is prepared as if a refunding were being requested. Accordingly, the beginning and ending dates in item 3.B should be the appropriate dates for the period of the extension, i.e., the day after the current grant's termination date and the day the extension period will end. Item 3.D should always be completed, since if there are no unexpended funds available to cover costs to be incurred during the extension period a supplementary grant rather than a no-cost extension would be required. The figure to be inserted in item 3.D will be the unexpended balance as of the end of the current grant. The most recent OEO Form 315a, Quarterly Financial Report, Support Data Sheet, must be attached to the 325 as support for the amount of unexpended funds claimed in block 3.D.

(iii) Since this kind of amendment request is prepared as a refunding, Column D of the CSA Form 325 should be left blank. Column E should be completed, showing the requested budget, by cost category, for the period of the extension (rather than a budget for the combined current period and the extension period). The total of Column E(1) should equal the figure in item 3.D since the requested budget is in effect a plan for using the unexpended funds available.

Subpart 1067.30—Preparation of CSA Form 314, Statement of CSA Grant (CSA Instruction 6710-CH 10)

SOURCE: 41 FR 56197, Dec. 27, 1976, unless otherwise noted.

§ 1067.30–1 Applicability.

This subpart applies to all grants to public and private organizations made under Titles II, III-B, and VII of the Community Services Act when such assistance is administered by the Community Services Administration.

§ 1067.30–2 Definitions of terms as used in this subpart.

(a) A program year is a grantee's 12-month accounting period. For community action agencies, this is the funding period for the principal grant that provides funds for most of the grantee's administrative costs. For other agencies funded by CSA this is their usual 12-month accounting period which may or may not correspond with the funding period of their grant(s) from CSA.

(b) *A program account funding period* extends from the effective date of a new or refunding action (Item 3) through the termination date (Item 12) or expiration of planned number of months for which funding is provided (Item 13). (See attached CSA Form 314.)

(c) *Unobligated balances* [1] (i.e., Unexpended funds) is that portion of the funds authorized by CSA which has not been obligated by the grantee prior to program year end or other 12-month accounting period.

(d) *Obligations* [1] is that amount of orders placed, contracts and grants awarded, services received, and similar transactions during a given period which will require payment during the same or future period.

§ 1067.30–3 Purpose.

This subpart provides for:

(a) Use of a single grant number for each grantee;

(b) Use of CSA Form 314, Statement of CSA Grant, as the basic action document; and

(c) Grantees' use of funds through the program account funding period. A grantee may not incur expenses under its program account after the termination date entered in column 12 of CSA Form 314, or after the expiration of the planned number of months for which funding is provided (column 13 of CSA Form 314). Except as provided in paragraphs (c)(1) and (2) of this section grant funds that are not expended by the end of the program account funding period must be returned to the Office of Community Services (OCS) in accordance with 45 CFR 1050.112(b).

(1) *Exception.* Under a grant with a planned minimum number of months which expires before June 24, 1982 funds may be used until June 24, 1982.

(2) *Extensions and reprogramming.* If a grantee applies for an extension of time in which to use the funds under its approved work program, OCS may extend the program account funding period under such terms and conditions as it deems appropriate. Alternatively, OCS may reprogram unexpended funds as part of a new grant action if the grantee is awarded an OCS grant pursuant to the block grant transition provisions of 42 U.S.C. 9911.

[41 FR 56197, Dec. 27, 1976, as amended at 47 FR 22535, May 25, 1982]

§ 1067.30–4 Policy.

(a) All grants made to the same organization will be identified by a single grant number.

(b) The Statement of CSA Grant, CSA Form 314, is the basic action document completed by CSA and sent to the grantee. CSA Form 314 is also an acceptance document upon which the grantee indicates his acceptance of the grant action with all attached conditions.

(c) Approval of a CSA grant or funding action means that Federal funds have been awarded to the grantee for the purpose of carrying out an approved work program. Specifically, CSA Form 314, Statement of CSA Grant, is used to:

(1) Approve an amount of Federal funds and specify the required non-Federal share percentage and amount for each program account;

(2) Approve transfers of funds between program accounts when required (reference OEO Instruction 6710–1, Change 3, relating to flexibility guidelines);

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[1] Source: OMB Circular A-110 and FMC 74-7.

(3) Approve program extensions where no change in funding is involved; and

(4) Deobligate funds as necessary from an on-going project or remaining from a terminated program.

§ 1067.30-5 Procedure.

(a) A single grant number is used to identify CSA grants, regardless of the source of funding within CSA.

(b) The following explanations refer to specific items on CSA Form 314, Statement of CSA Grant:

(1) *Item 1—Name and address of grantee.* This item is self-explanatory.

(2) *Item 2—Grantee number.* This space contains a five-digit number assigned by CSA. All funds awarded to a grantee will be identified by this number.

(3) *Item 2—Fund source code (FS).* This space contains an applicable alphabetic character identifying the source of CSA funds from among the following:

F—Office of Economic Development.
G—Office of Operations.
J—Boston Region (1).
K—New York Region (2).
L—Philadelphia Region (3).
M—Atlanta Region (4).
N—Chicago Region (5).
P—Dallas Region (6).
Q—Kansas Region (7).
R—Denver Region (8).
S—San Francisco Region (9).
T—Seattle Region (0).

(4) *Item 2—Federal fiscal year (FFY).* This refers to the Federal fiscal year in which funds are awarded (i.e., for the Federal Fiscal Year ending September 30, 1977, 77 would be entered).

(5) *Item 2—Action number.* This is a consecutive number assigned by the funding office to identify each funding action by grantee within a Federal fiscal year. For example the number "01" will be assigned to the first funding action by a Regional Office; the number "01" will likewise be assigned to the first funding action by a Headquarters Program Office and so on through the end of the Federal fiscal year, at which time the fundings in the next fiscal year would begin with "01."

(6) *Item 3—Effective date.* This is the effective date of the funding action; i.e., obligations, deobligation, extension, etc. If funds are being obligated, grantees may not incur costs against this funding action before the date shown in this block.

(7) *Item 4—Obligation date.* This is the date on which a grant action (CSA Form 314) obligating new funds is mailed to the Governor or grantee. Enter the effective date (Item 3) for all other types of actions, e.g., deobligations, extensions, etc.

(8) *Item 5—Program year.* This section will show the grantee's program year. This period will not necessarily agree with the period for which funds are awarded. However, whenever possible the grantee's fundings will coincide with the grantee's program year.

(9) *Item 6—Program account number.* This will show the program accounts (i.e., 01, 05, 55, etc.) as explained in CSA Instruction 6100-1a, Program Account Structure, funded by this grant action.

(10) *Item 7—Program activity code (PAC).* This code is for identification of CSA obligations, as explained in OEO Staff Manual 2135-1, Accounting Codes.

(11) *Item 8—Program account name.* This will show the program account being funded by this grant action by name. Refer to OEO Instruction 6100-1a, Program Account Structure.

(12) *Item 9—Federal funds awarded this action.* (i) *Funds awarded.* This column shows the amount of Federal funds awarded by this action. An amount will be shown for each program account funded by this action and the total shown at the bottom of the column. Previous amounts awarded to the grantee will not be shown on this form.

(ii) *Funds deobligated.* A deobligation of Federal funds will be shown in this column by placing a minus (−) sign in front of the amount.

(iii) *Funds transferred.* This column is also used to reflect CSA's approval for the transfer of funds between program accounts (reference OEO Instruction 6710-1, Change 3) by placing the appropriate (+) and (−) in front of the amounts representing the increase and decrease. Only the amount being transferred will be reflected in this column and not the original amount awarded.

(13) *Items 10 and 11—Non-Federal share.* These columns show the percentage and amount of non-Federal share required for each program account. If the non-Federal share is not required for a program account, not applicable (N/A) will be entered in this space. In no case will a figure higher than that legally or administratively required be entered.

(14) *Item 12—Termination date.* When a termination date is entered, expenses may not be incurred for the program account beyond this date. When this date is entered, this will determine the end of the program account funding period.

(15) *Item 13—Planned number of months funding provided.* This information is to assist the grantee in planning and budget control and in determination of the program account funding period.

(16) *Item 14—Recommendation for approval.* Contains name of appropriate Regional Director.

(17) *Item 15—Statement of CSA approval.* This item is self-explanatory.

(18) *Item 16—Grantee acceptance of grant.* This item is self-explanatory.

Subpart 1067.40—Applying for a Grant Under Title II, Sections 221, 222(a), 231, and 232 of the EOA (CSA Instruction 6710-1 CH 11)

SOURCE: 42 FR 10689, Feb. 23, 1977, unless otherwise noted.

§ 1067.40-1 Applicability.

This subpart applies to all applications for funding under Title II, sections 221, 222(a), 231 and 232 of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration. The provisions of this subpart also may be extended to other programs under the Act when the applicable program regulations so indicate.

[42 FR 10689, Feb. 23, 1977, as amended at 46 FR 43691, Aug. 31, 1981]

§ 1067.40-2 Policy.

CSA continues to support the position stated in 1971 that grantees must increase their independence and self-reliance and be concerned with solidly establishing community action concepts so that these achieve a genuine self-sustaining life on their own. In order to furnish grantees support for this evolution, CSA has permitted, and will continue to permit, flexibility in developing, justifying, and locally implementing the means for planning, programming and budgeting to meet the perceived needs of their constituencies. For local initiative programs funded under Section 221 of the Economic Opportunity Act, the grantee has been given increased responsibility to select and develop the programs which will be most meaningful to its community. The implementation of such grantee plans and programs remains subject to the approval of the grantee's governing board. CSA exercises its program review authority through continuous monitoring and evaluation of performance, review for compliance for eligibility and auditing for financial management evaluation.

§ 1067.40-3 Application process for funds under Title II, Sections 221, 222(a), and 231 of the EOA.

(a) *Overview of the application process.* The grant application process for Title II funding consists of the following steps which, except as noted, apply to all initial and refunding grants:

(1) Initial inquiry (initial grants only).

(2) Submission of notification of intent to clearinghouse by applicant.

(3) Submission of documents re eligibility for funding to Administering Office.

(4) Determination or verification of grantee eligibility by Administering Office.

(5) Planning Process undertaken by applicant.

(6) Receipt of program and funding guidance.

(7) Field Pre-review (optional)

(8) Submission of formal application.

(9) Review by Administering Office of grant application.

(10) If acceptable, recommendation for funding and submission of grant funding documents to Headquarters funding official for action.

(11) If approved, and after Congressional release has been accomplished, submission of approved grant package to Governor's office.

NOTE: Submission to Governor's office does not apply to any institution of higher education, as defined in section 401(f) of the Higher Education Facilities Act of 1963, which was in existence on or prior to August 20, 1964.

(12) Submission of approved grant documents to grantee for acceptance.

(13) Grantee returns signed CSA Form 314 to administering office.

(14) Governor responds or 30 day waiting period elapses.

(15) Funds release accomplished.

(b) Initial inquiry. Applicants[1] for grants under sections 221, 222(a) and 231 who are not currently funded by CSA should make an initial inquiry to CSA, by either letter or telephone, prior to submitting a written application unless, of course, the program guidelines for a program indicate a specific office or individual to be contacted. Such inquiry is essential to determine the appropriate program authority under which application should be made, the availability of funds, funding timetable and deadlines, special requirements for particular programs, specific instructions and procedures for determining eligibility and for submitting a formal application. All inquiries should be directed to the appropriate Regional Office unless otherwise indicated in specific program guidelines. Initial inquiries will normally not be necessary for current recipients of Title II grants since the CSA Administering Office will be in contact with the grantee with regard to the refunding of the grant. Any inquiries on refunding, however, should be addressed directly to the appropriate Administering Office.

(c) *Program and funding guidance.* In place of the Letter of Understanding prescribed by OEO Instruction 6710-1, August, 1968, necessary funding guidance required for preparation of plans, programs or budgets, will be communicated at the earliest feasible date to grantees. It is expected that the funding guidance will be communicated at least six months prior to the end of each grantee's current program year.

(d) *Grantee internal planning, programming and budgeting procedures.* (1) Grantees are responsible for the development and maintenance of complete documents related to planning, description of work plans, and budgets backup detail. Grantees will have flexibility in developing planning documents but they must address at least the following: (i) Incidence of poverty; (ii) problems and causes of poverty; (iii) assignments of priorities to the solutions of these problems; (iv) goals of the agency for the proposed funding period; (v) approaches to be used; (vi) resources to be mobilized; and (vii) how available public and private resources can be utilized.

(2) A copy of the grantee current plans must be on file with CSA for grantees seeking refunding at least 150 days prior to the end of the program year. Resubmission is required as necessary to justify work program changes, or new funding requests or to document changes to grantee plans. Detailed grantee backup documents for support of submitted work programs and budget detail do not have to be submitted to the Administering Office; but must be available to CSA for review upon request. The document must have clear, concise milestones in order for CSA to measure performance of the grantee and to establish cost performance analysis.

(3) Evidence of approval by the Grantee Board of grantee plans, priorities, proposed programs, and budgeted items, or changes to these plans, programs or budget items, must be specifically annotated in the Minutes to the Board Meeting(s) at which these items are discussed. It is not necessary that such minutes be submitted to CSA as part of the grant application.

The planning document must also provide evidence of participation of the poor in the development and implementation of the plan.

(e) *Field prereview.* (1) In some cases, grantees may be requested by

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[1] Individuals, political parties, and for-profit organizations, partnerships and corporations are ineligible for assistance under these Sections.

Administering Offices to participate in prefunding conferences dealing with matters related to grantee eligibility to receive CSA funds, grantee planning or work programs, planned or requested funding levels, or matters related to grantee involvement in local community poverty planning, mobilization of local resources, or other such matters deemed by the Administering Office to be essential to the initial funding or continued funding of the program by CSA.

(2) The timing of such conferences will be scheduled to permit prompt grant refundings.

(f) *Required documents*—(*grantee*). (See chart which follows.)

REQUIRED DOCUMENTS

Sections of the act under which funds requested	Applicant	Forms to be submitted prior to formal application [1]						Forms to be submitted at time of formal application							
													When delegating programs		
		424	3	5	393	394	395	424	25	25a	419	84 [5]	85	87	11
I. *221:*															
A. Initial funding	Community action agency	X	X	X		Opt	X	X	X	X	X	X	X	X	X
	Limited purpose agency (including SEOO's)	X		[2] X	[3] X	X	[4] X	X	X	X	X	X	X	X	X
B. Refunding	Community action agency	X	[3] X	[3] X		Opt	X	X	X	X	X	X	X	X	X
	Limited purpose agency (including SEOO's)	X		[3] X		X	[4] X	X	X	X	X	X	X	X	X
II. *222:*															
A. Initial funding	Community action agency	X				Opt	[4] X	X	X	X	X	X	X	X	X
	Limited purpose agency (including SEOO's)	X		[2] X	X	Opt	[4] X	X	X	X	X	X	X	X	X
B. Refunding	Community action agency	X				Opt	[4] X	X	X	X	X	X	X	X	X
	Limited purpose agency (including SEOO's)	X				Opt	[4] X	X	X	X	X	X	X	X	X
III. *231*	State economic opportunity offices	X				Opt	[4] X	X	X	X	X		X	X	X

[1] For refundings, submission will be 150 days prior to PYE.

[2] Except SEOO's.

[3] Keep on file.

[4] Except sec. 1.

[5] Except Program Account 01.

(g) *Additional required documents when grant funds are used as venture capital.* When a grantee proposes to undertake an activity using Title II funds as venture capital, the venture must be reported as an activity on CSA Form 419 of the grant application, for which the appropriate Standards of Effectiveness (§ 1067.4) must be addressed. If the grantee will not operate the venture itself, it shall arrange to sign a contract with the organization which will operate the venture. See § 1063.131 of this chapter for a discussion of the requirements when contracting with an organization to perform a component of the grant work program. In addition, the grantee shall submit the following materials, as appropriate, in support of the Form 419:

(1) Documentation that there will be no substantial negative impact on existing small businesses;

(2) Appropriate feasibility studies and cost analyses;

(3) Certified balance sheets and profit and loss statements for the immediately preceding three years or from the commencement of its operation (whichever period is shorter) if funds are to be used for the acquisition, preservation, or expansion of an existing business venture;

(4) Cash-flow projections and pro forma profit and loss statements and balance sheets estimated on a monthly basis for two years;

(5) Resumes of the management team;

(6) The articles of incorporation and the bylaws of the venture.

(h) *Special CSA requests for grantee documentation.* In accordance with OMB Circular A-110 and FMC 74-7, CSA reserves the right to require additional documentation in any areas of planning, specifications of work programs, or budget details if the grantee has a history of poor performance, is not financially stable, or if its management system does not meet the Uniform Federal Standards promulgated under Part 1050 (6800 series of CSA's directives system).

[42 FR 10689, Feb. 23, 1977, as amended at 42 FR 18402, Apr. 7, 1977; 42 FR 22365, May 3, 1977; 45 FR 39850, June 12, 1980]

§ 1067.40–4 Amendments.

(a) *Grantee flexibility.* (1) Grantees may make changes in the distribution of money within and between program accounts during the program year for which the money has been granted and certain other changes described below. In order to make some of these changes grantees must have prior permission from the Community Services Administration but they do not need prior permission if the changes are made within the allowed flexibility. (See viii below.) Where prior permission is required, an amendment request must be submitted to the CSA Administering Office as described below. Following are the various types of changes possible:

(i) *Changes in the total program level.* No change may be made by the grantee which changes the total program level. Such a change must be made by a supplemental grant (in the case of an increase) or a deobligation or reprogramming action (in the case of a decrease).

(ii) *Decrease in the level of other than Section 221 Program.* The grantee may not apply any funds for programs authorized under section 222 or section 231 to any program except that for which it was granted. If the level of these programs is to be decreased, it should be accomplished by a deobligation action on a CSA Form 314.

(iii) *Increase in the level of other than a Section 221 Program.* The grantee may apply funds for programs authorized under section 221 to any other CSA funded program run by the grantee, so long as neither work program is changed beyond what is allowed in (viii) below and it is within the flexibility rules. No prior CSA permission is needed for such a change. However, the Administering Office in CSA must be informed of such a change on a CAP Form 25b, Justification of Program Account Amendment.

(iv) *Changes in administering agency funding levels.* In executing contracts, a grantee may change the delegate agency's total funding level from that estimated on the Administering Agency Funding Estimate, CAP Form 85, submitted to the funding office, *Provided,* That the sum of such changes does not exceed 25 percent of the delegate agency's total funding level (Federal and Non-Federal share) estimated on the CAP Form 85 (or $150,000 whichever is less). Changes exceeding 25 percent or $150,000 must have prior written approval from CSA Administering Office.

(v) *Changes in work programs.* A grantee may change the work program without prior CSA permission only if the changes:

(A) Do not constitute a basic change in objective, strategy, implementation plan or activities of the program;

(B) Do not increase or decrease by more than 20 percent the estimated number of participants, trainees or enrollees;

(C) Do not change the program account level more than the flexibility allowed in any one Program Year. (See paragraph (a)(1)(viii) of this section.)

(vi) *Changes in salary and position.* A grantee may change salaries or the number of staff positions, or create new positions without CSA approval, *Provided,* That such changes:

(A) Do not exceed wage comparability standards and grantee salary schedule;

(B) Are in accordance with CSA and grantee personnel policies;

(C) Do not result in work program changes for which CSA approval is required, as outlined in above, and

Provided, That CSA has not previously notified the grantee in writing that such a position may not be established. Written CSA approval must be obtained for all other changes in salaries and positions.

(vii) *Changes in the amount of carryover funds assigned and in the new obligational authority approved for a program account.* This form of amendment affects only the manner in which a program account is funded, not its budget or work program and is always initiated by CSA. It may result in a supplemental grant action or reduction of funds.

(viii) *Changes between Section 221 Program Accounts.* (A) Funds may be shifted between section 221 accounts; from section 221 accounts to section 222 accounts subject to the flexibility rules listed below. The Administering Office must be informed of changes within flexibility within at most 30 days of the change, on a CAP Form 25b marked: "Change within flexibility; information only." Such changes made within flexibility are permitted only if they do not require prior CSA approval for any other reasons, for example, if the work program will be substantially altered (see paragraph (a)(1)(v) of this section). Obviously no funds can be moved into a program account not currently used by the grantee since that would more certainly involve a basic work program change and the move would increase the new account by more than 10 percent.

(B) *Flexibility rules.* (*1*) No account may be increased or decreased by more than 10 percent of $100,000, whichever is smaller, without prior CSA approval.

(*2*) This flexibility (10 percent or $100,000 whichever is smaller) is the total flexibility to be allowed in any one Program Year without prior CSA approval.

(C) Changes made within flexibility (as well as those made beyond flexibility with CSA permission) must show up immediately on the SF269, Financial Status Report. The Administering Office retains the right to disapprove any changes, even those which would fall within flexibility.

(ix) *Changes between personnel and non-personnel costs.* (A) Grantees may alter the budget submitted by moving funds between personnel and non-personnel categories without prior CSA permission, as long as no work changes outlined in paragraph (a)(1)(v) of this section are involved when the money remains in the same Program Account.

(B) Nothing in the foregoing shall prohibit the Administering Office from allowing the grantee to make changes, via formal amendment procedures, in the Work Program or the distribution of CSA administered funds which exceed the flexibility provisions described above. Also nothing in the foregoing shall prohibit the Regional Office or the funding office within CSA from disapproving changes which would normally be allowed under the flexibility procedures described above, *Providing,* That notice of such a prohibition shall be given to the grantee by the funding office at the time that the funds are originally granted.

(2) The procedures by which the grantee requests prior permission for changes are outlined in paragraph (b) of this section.

(3) No change which is made may increase the percentage of administrative costs after changes are made to more than 15 percent of the total program costs. (See OEO Instruction 6807-1, June 17, 1969).

(4) No change which is made may increase the percentage of Federal assistance in the total cost above that indicated on CSA Form 314.

(b) *How to amend a grant.* (1) When a change in an already approved work program is proposed by the grantee which exceeds the scope of those permitted in paragraph (a) of this section, prior approval must be requested from CSA through submission of the following:

(i) CAP Form 25b Justification of Program Account Amendment;

(ii) CAP Form 25, Program Account Budget (if the requested change is related to budget); and/or

(iii) CAP Form 419, Summary of Work Programs and Budget, if there is also a change in the goals, elimination or addition of projects to be conducted, or change in total CSA funding level. Plus

(iv) A Statement of CSA Grant, CSA Form 314, must be executed if the change is in total CSA funding level.

§ 1067.40-5 Where to apply.

Unless otherwise stated in specific program regulations, requests for information and forms, and submission of initial proposals should be addressed to the CSA Regional Office in your area.

Subpart 1067.41—Program Account Structure (CSA Instruction 6100-1b and 6100-1b CH 1)

SOURCE: 44 FR 61348, Oct. 25, 1979, unless otherwise noted.

§ 1067.41-1 Applicability.

This rule applies to grants funded under Titles I, II, IV, VII and IX of the Economic Opportunity Act of 1964, as amended, when the funds are administered by CSA.

§ 1067.41-2 Policy.

(a) CSA Program Accounts are the units within the financial and programmatic systems of the Agency which record the expenditure of funds and describe the activities that may be conducted under each account.

(b) CSA requires that program accounts listed in Appendices A and B be used on all funding documents (CSA Form 314), work programs (CSA Form 419) and the Project Progress Review Reports (CSA Form 440).

§ 1067.41-3 Description of Program Accounts.

Appendix A to this subpart lists all program accounts by type of program. Appendix B to this subpart includes a brief description of each program account, including the section of the Economic Opportunity Act the account implements.

[43 FR 24842, June 8, 1978]

APPENDIX A TO SUBPART 1067.41—PROGRAM ACCOUNT CODES

PROGRAM ACCOUNT CODES

Program account No.	Subject	Description
01	Local Initiative/CAA Administration.	
05	Local Initiative Program.	
02	Youth Sports	Summer Personnel.
03	do	Other.
04	do	Winter Program.
60	Summer Recreation	Personnel.
10	do	Other.
06	SOS	Independent Living.
07	SOS	Access.
08	SEOO	Training.
09	SEOO	Other.
12	Nutrition	Access.
13	do	Self-Help.
15	do	Consumer Education.
16	do	Crisis Relief.
29	do	Research.
39	do	Demonstrations.
42	do	T&TA—Seminars.
43	do	T&TA—On-Site Assistance.
44	do	T&TA—Other.
48	do	Evaluation.
18	Migrants and Seasonal Farmworkers.	
21	Energy	Weatherization.

PROGRAM ACCOUNT CODES—Continued

Program account No.	Subject	Description
22	do	Crisis Intervention.
23	do	Consumer Information, Education, Legal Assistance.
25	do	Alternate Energy Sources.
80	do	Emergency Energy Assistance.
50	do	Research.
53	do	Demonstration.
54	do	T&TA—Seminars.
56	do	T&TA—On-Site Assistance.
57	do	T&TA—Other.
58	do	Evaluation.
19	Technical Assistance	Grantee Administration.
27	do	Grantee Program.
28	do	Other.
31	Rural Housing	Housing Production.
32	do	Access to Federal Home Loan Services.
33	do	Training and Technical Assistance.
34	do	Small Town Community Development.
35	do	Housing Consumer Assistance.
36	do	Management Services.
64	Special Assistance	
63	Economic Development.	Special Impact.
49	do	Rural Programs.
51	do	Rural Development Finance.
52	do	Community Development Finance.
61	do	Training and Technical Assistance.
66	do	Demonstration.
67	do	Research.
68	do	Evaluation.
69	do	Planning Grants.
71	Evaluation	Type I.
73	do	Type II.
75	do	Type III.
78	do	Other.
82	Research	
84	Demonstration	
98	Program Administration.	

APPENDIX B TO SUBPART 1067.41—DEFINITIONS OF ACTIVITIES WHICH MAY BE CONDUCTED, SINGLY OR IN COMBINATION UNDER EACH PROGRAM ACCOUNT

01. Local Initiative/CAA Administration (221)

Includes support for general administration and management of central staff, facilities, and equipment of the community action agency. Coordination, mobilization of resources, general management, information collection and use, as well as planning, program development, and evaluation activities undertaken by CAAs as part of their overall administrative and management responsibilities are included in this account. Support of the CAA board's functioning should also be included. Administrative overhead costs for delegate agencies or general support functions performed by the CAA for such delegate agencies where these costs are not related to specific programs may be included as appropriate. However, this activity does *not* include administration or management directly linked to specific program activities such as community nutrition activities, etc. Such administrative overhead should be reported under the account designated for that program.

02. Youth Sports—Summer Personnel (227)

Includes the personnel costs to operate the national youth sports program during the summer months, June through late August or mid-September. This program provides disadvantaged youths the opportunity for sports skills instruction, sports competition, learning good health practices, and career and educational opportunities. Stipends should not be included in this account.

03. Youth Sports—Summer Other (227)

Includes the non-personnel costs to operate the national youth sports program during the summer months, June through late August or mid-September.

04. Youth Sports—Winter Program (227)

Includes all costs, both personnel and non-personnel to operate the national youth sports program during the winter months, September through May.

05. Local Initiative Program (221)

The basic purpose of community action programs as stated in the Economic Opportunity Act is "to stimulate a better focusing of all available local, State, private, and Federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas, to attain the skills, knowledge, and motivations and secure the opportunities needed for them to become fully self-sufficient." This purpose may be accomplished by programs designed and/or selected at the local level to meet specific community needs. They may deal with particular concerns in such areas as housing, manpower, education, health, day care, consumer affairs, economic development, general social services, etc. They may focus on particular target groups such as youth. They may employ some type of neighborhood center(s) as a means of reaching persons and delivering services.

06. Senior Opportunity and Services—Independent Living (222(a)(2))

Includes the personnel costs and non-personnel costs to help maintain independent living style of the Older Poor including the following: Housing Services, Nutrition Services, Home Care Services, Health Services, Elderly Day Care Services, and other services such as Counseling, and Safety Education. Also includes cost of providing jobs to elderly poor, and elderly Community Centers.

07. Senior Opportunity and Services—Access (222(a)(2))

Includes the personnel costs and non-personnel costs to identify and meet the needs of older poor in participation of other Federal, State, and local programs. Specifically includes costs associated with Access/Advocacy Activities for Supplementary Security Income Program and Food Stamp Program. Also includes costs of providing jobs and training to older poor, and transportation to services.

08. SEOO—Training (231)

Includes all costs directly associated with providing training and technical assistance by the SEOOs to communities, state and local agencies and to community action agencies in carrying out the programs under the Economic Opportunity Act.

09. SEOO—Other (231)

Includes other costs incurred by the SEOOs not included as training and technical assistance under account 08.

10. Summer Recreation—Other (222(a)(6))

Includes non-personnel costs associated with the summer recreation program which is aimed at expanding and improving recreational services and activities for the economically disadvantaged youths. (Personnel costs associated with this program are shown under Program Account 60.)

12. Nutrition—Access (222(a)(1))

Includes operating program costs associated with improving the opportunities for low-income people to gain access to, and participation in Federal and non-Federal food and nutrition programs.

13. Nutrition—Self-Help (222(a)(1))

Includes operating program costs associated with projects designed to foster self-sufficiency through the mobilization of financial and community resources. Examples include buying clubs, community gardens, food raising co-ops, community canneries, farmer-to-consumer sales and greenhouse food production.

15. Nutrition—Consumer Education (222(a)(1))

Includes operating program costs associated with improving the ability of low-income individuals and families to understand the connection between diet and health, to obtain at the lowest prices nutritionally superior food and to prepare and preserve these foods in ways that minimize the loss of nutrients.

16. Nutrition—Crisis Relief (222(a)(1))

Includes operating program costs associated with the provision of food vouchers, foodstuffs or funds to purchase food stamps on a temporary or crisis basis. (For additional Program accounts dealing with nutrition see numbers 29, 39, 42, 43, 44 and 48.)

18. Migrant and Seasonal Farmworkers (Title IV)

Includes costs associated with the provision of services to migrant and seasonal farmworkers such as weatherization, transportation, housing, training, technical assistance, etc.

19. Training and Technical Assistance—Grantee Administration (230)

Includes costs associated with providing training and technical assistance to improve and maintain the administrative and managerial capacity of CSA-funded grantees, such as accounting, personnel, property or Board training.

(For additional program accounts dealing with technical assistance see numbers 27 & 28.)

21. Energy—Weatherization (222(a)(5))

Includes costs associated with home repairs and energy saving improvements to minimize heat transfer and improve thermal efficiency of dwellings.

22. Energy Crisis Intervention (222(a)(5))

Includes costs associated with intervention to prevent hardship or danger to health, especially the older poor. Includes cost for payment of fuel bills, emergency energy-related repairs, and payments other than home heating payments.

23. Energy—Consumer Information, Education and Legal Assistance—(222(a)(5))

Includes costs associated with the dissemination of energy conservation information, conduct of energy conservation educational activities, and the representation of the interests of the poor in public proceedings, for example, energy policy and utility rate structure.

24. Energy—Transportation (222(a)(5))

Includes costs associated with efforts to offset the increased costs to the poor of transportation needed for access to essential services and employment.

25. Energy—Alternate Energy Sources (222(a)(5))

Includes costs associated with the development and application to energy needs of the poor those technologies that capitalize on non-fossil fuels and renewable energy resources, or make conventional fuels available to the poor at substantially decreased costs and/or at increased energy efficiency. (For additional program accounts dealing with Energy, see numbers 50, 53, 54, 56, 57 and 58.)

27. Training and Technical Assistance—Grantee Program (230)

Includes costs associated with the provision of training and technical assistance in specific program areas such as housing, mobilization of resources, etc.

28. Training and Technical Assistance—Other (230)

Includes costs associated with training and technical assistance which does not relate specifically to grantee administration or grantee program areas.

29. Nutrition—Research (222(a)(1))

Includes costs associated with the development of new knowledge about hunger and malnutrition among the poor and/or ways to deal with their problems approved under the authority of section 222(a)(1) of the EOA.

31. Rural Housing—Housing Production (222(a)(4)) and (232)

Includes costs associated with the repair and rehabilitation of housing for poor families, and development of housing factory delivery systems for building low cost housing. Also includes costs associated with removing architectural barriers from the homes of low-income disabled individuals.

32. Rural Housing Access to Federal Home Loan Services (222(a)(4)) and (232)

Includes costs associated with developing methods for full participation of the poor in Federal Home Loan, grant and subsidies programs.

33. Rural Housing Training and Technical Assistance (222(a)(4)) and (232)

Includes costs associated with area and State wide housing development corporations and other housing grantees in providing training and technical assistance, to CAAs and single purpose housing grantees.

34. Rural Housing—Small Town Community Development (222(a)(4)) and (232)

Includes costs associated with providing training and technical assistance to assist officials in small towns, with large percentage of poor, to implement Community Development Programs that improve housing conditions of the poor.

35. Rural Housing—Housing Consumer Assistance (222(a)(4)) and (232)

Includes costs associated with providing assistance for activities such as tenant organizing, fair housing assistance to poor families and groups, home ownership and default counseling, homesteading as well as advocacy and legal services for individuals and families.

36. Rural Housing—Management Services (222(a)(4)) and (232)

Includes costs associated with providing management services to assist grantees in the acquisition and maintenance of Default Housing.

39. Nutrition—Demonstrations (222(a)(1))

Includes costs associated with experimental, pilot or demonstration projects which test new or improved approaches to combating the problems of hunger and malnutrition.

42. Nutrition—T&TA Seminars (222(a)(1))

Includes costs associated with holding nutrition related T&TA seminars for persons from two or more agencies. Such seminars should help grantees plan, conduct and/or evaluate nutrition programs.

43. Nutrition—T&TA On Site Assistance (222(a)(1))

Includes the cost of providing nutrition related T&TA services to specific grantee personnel at the grantee's location. Such services should help a specific grantee plan, conduct and/or evaluate nutrition programs.

44. Nutrition—T&TA Other (222(a)(1))

Includes any costs of a T&TA activity related to nutrition which is not classified as seminar or on-site assistance in program accounts 42 and 43.

48. Nutrition—Evaluation (222(a)(1))

Includes costs associated with evaluation of nutrition projects approved under the authority of Section 222(a)(1) of the EOA. Does not include costs for grantee's self-evaluation.

49. Economic Development—Rural Programs (Title VII)

Includes costs associated with meeting the special economic needs of rural communities and areas pursuant to Title VII, Part B of the EOA.

50. Energy—Research (222)(a)(5))

Includes costs of research related to energy type projects approved under the authority of Section 222(a)(5) of the EOA.

51. Economic Development—Rural Development Finance (Title VII, Part C)

Includes costs associated with the development, testing and operation of rural financial support mechanisms in conjunction with loans from the Rural Development Loan Fund.

52. Economic Development—Community Development Finance (Title VII, Part C)

Includes costs associated with the development, testing and operation of community financial support mechanisms in conjunction with loans from the Community Development Loan Fund.

53. Energy—Demonstrations (222(a)(5))

Includes costs associated with experimental, pilot or demonstration projects which test new or approved approaches to solving the energy problems of the poor.

54. Energy—T&TA Seminars (222(a)(5))

Includes costs associated with holding energy related T&TA seminars for persons from two or more grantees. Such seminars should help grantees plan, conduct and/or evaluate energy programs.

56. Energy—T&TA On Site Assistance (222(a)(5))

Includes the costs of providing energy-related T&TA services to specific grantee personnel at the grantee's location. Such services should help a specific grantee plan, conduct and/or access energy projects.

57. Energy—T&TA Other (222(a)(5))

Includes any costs of a T&TA nature related to energy which is not classified as services or on-site assistance in program accounts 54 and 56.

58. Energy—Evaluation (222(a)(5))

Includes costs associated with evaluation of energy projects approved under the authority of section 222(a)(5) of the EOA.

60. Summer Recreation—Personnel (222(a)(6))

Includes all personnel costs associated with the summer recreation program which is aimed at expanding and improving recreational services and activities for the economically disadvantaged youths. (Non-personnel costs associated with this program are shown under Program Account 10.)

61. Economic Development—Training and Technical Assistance (Title VII, Part D)

Includes training and technical assistance costs related to economic development projects approved under the authority of Title VII, Part D of the EOA.

63. Economic Development—Special Impact (Title VII, Part A)

Includes costs associated with community development corporation projects approved under the authority of Title VII, Part A of the EOA.

64. Special Assistance (234)

Includes costs associated with projects serving groups of low income individuals who are not being effectively served by other Title II programs.

66. Economic Development—Demonstration (Title VII, Part D)

Includes costs associated with pilot and demonstration activities approved under the authority of Title VII, Part D of the EOA.

67. Economic Development—Research (Title VII, Part D)

Includes costs associated with research activities approved under the authority of Title VII, Part D of the EOA.

68. Economic Development—Evaluation (Title VII, Part D)

Includes costs associated with evaluation activities approved under the authority of Title VII, Part D of the EOA.

69. Economic Development—Planning Grants (Title VII, Part D)

Includes costs associated with economic development planning grants approved under the authority of Title VII, Part D of the EOA.

71. Evaluation—Type I (Title IX)

Includes costs associated with national impact evaluation strategies approved under the authority of Title IX.

73. Evaluation—Type II (Title IX)

Includes costs associated with determining the relative effects of different program strategies, intervention techniques and administrative processes employed to implement a national program approved under the authority of Title IX.

75. Evaluation—Type III (Title IX)

Includes costs associated with assessing the effectiveness and efficiency of individual grantees and projects.

78. Evaluation—Other (Title IX)

Includes costs associated with assessment projects not included under program accounts 71, 73, and 75. Examples might include short-term studies that respond to policy-related questions.

80. Energy—Emergency Energy Assistance (222(a)(5))

Includes costs associated with a special program to provide assistance to low-income households facing a crisis as a result of the rising cost of energy and severe weather conditions by paying fuel/utility bills, providing lines of credit, or providing services such as blankets, clothing, etc.

82. Research (Title I) and (232)

Includes costs associated with basic research and related evaluation conducted to provide meaningful information for formulating new programs and policies affecting the poverty population in program areas not included elsewhere. Specifically excluded are nutrition (29, 39, 48) energy (50, 53, 58) rural housing (31, 32, 33, 34, 35, 36) economic development (67, 68) and Title IX (71, 73, 75, 78).

84. Demonstration (232)

Includes costs associated with pilot or demonstration projects designed to test or assist in the development of new approaches or methods which will aid CSA's poverty population.

98. Program Administration

Includes costs incurred by Federal employees for the overall direction, management, coordination and support of all CSA programs and related anti-poverty programs of other Federal, State and local agencies. This is not a grantee activity.

Subpart 1067.42—Establishing and Maintaining Program Accounts (CSA Instruction 6806-01)

Source: 44 FR 56558, Oct. 1, 1979, unless otherwise noted.

§ 1067.42-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by Community Services Administration.

§ 1067.42-2 Effective date.

May 10, 1971 (CSA Instruction 6806-01).

§ 1067.42-3 Establishing and maintaining program accounts.

(a) Each grantee shall maintain separate accounting records for each grant. The grantee shall establish a separate bank account for community action program funds, but need not establish a separate bank account for each grant, provided all transactions are clearly identified by grant in the accounting records.

(b) The accounting records shall include all receipts that occur during the grant period, including Federal grants, non-Federal contributions in cash and in-kind, interest earned, and any income from fees charged to program beneficiaries. The financial records shall also include all expenditures from program funds; however, it is not necessary, and in many cases it may not be feasible, to distribute expenditures between Federal and non-Federal contributions.

(c) CSA recognizes that the accounting system utilized in grantee organizations will vary from a pure cash receipt and expenditure system to a very extensive accrual system. CSA will not dictate the type and format of the system to be used, since the interest of the Federal Government is satisfied if a system is established which is adequate to account for program funds, which provides accurate and current information relating to program progress, and which may be audited without undo difficulty.

(d) Such a system must meet the following criteria:

(1) The accounting records shall provide the information needed to identify adequately the receipt and expenditure of all program funds separately for each grant. Expenditures shall be recorded by the component project and budget cost categories shown in the approved budget (CSA Form 325).

(2) Each entry in the accounting records shall refer to the documentation which supports the entry and the documentation shall be filed in such a way that it can be readily located.

(3) The accounting records shall provide accurate and current financial reporting information.

(4) The accounting system shall possess an adequate means of internal control to safeguard the assets, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed management policies.

(e) It is permissible for the grantee to maintain the record of non-Federal contributions in its regular accounts, provided a complete series of reference memoranda or a summary list of non-Federal contributions is incorporated into the accounts quarterly.

Subpart 1067.43—Accounting for Delegated or Contracted Activities (CSA Instruction 6806-04)

SOURCE: 44 FR 56558, Oct. 1, 1979, unless otherwise noted.

§ 1067.43-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV, VII, of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1067.43-2 Effective date.

May 10, 1971 (CSA Instruction 6806-04).

§ 1067.43-3 Accounting for delegated or contracted activities.

(a) In every case where the conduct of all or part of the component is delegated to another agency by the grantee, the grantee is held responsible for performance of the program, including proper accounting for expenditure of funds. The intention to make such a delegation must be set forth in the approved application for the grant or be subsequently approved by CSA, prior to the actual delegation.

(b) The grantee organization shall require that fiscal records be kept by the delegate agencies with which it contracts in accordance with the following guidelines:

(1) If the delegate agency is a public body, the grantee shall stipulate that program funds be disbursed through the chief financial officer of the public body, make certain that these financial instructions are known to the chief financial officer, and ensure that an appropriate reporting system is established so that the grantee can meet its obligation to CSA. Inclusion of the program expenditures of the delegate agency in the regular audit program of any public body which becomes a delegate agency should also be assured.

(2) Where the delegate agency is a private organization, the grantee may pursue one of the following courses in order to assure proper fiscal accountability:

(i) Require appropriate certification that the accounting system of the delegate agency is adequate to meet the requirements of the contract.

(ii) Finance, as part of the contract, adequate accounting assistance commensurate with the size and complexity of the contract. *OR*

(iii) Provide on the grantee's staff, on a full, part-time, or consultant basis as required, qualified persons to consult with the delegate agencies, keep essential accounts, perform such audits as are deemed necessary, and consolidate and prepare appropriate reports to CSA. Grantees dealing with small private organizations as delegate agencies may find it more economical and desirable to use this approach than to attempt to require the delegate agency to hire professional help and establish its own accounting system.

(3) In the case of a contract or agreement with an individual, the service to be performed is the accountable item. No financial records are required on the part of the person performing the service unless it is performed on a cost

reimbursable basis, in which case the grantee shall require appropriate vouchers to be submitted.

PART 1068—GRANTEE FINANCIAL MANAGEMENT

Subpart 1068.6—Grantee Compliance With IRS Requirement for Withheld Federal Income and Social Security Taxes (CSA Instruction 6810–1)

Sec.
1068.6-1 Applicability of this subpart.
1068.6-2 Purpose.
1068.6-3 Policy.
1068.6-4 General.

Appendix A to Subpart 1068.6

Subpart 1068.20—Non-Federal-Share Requirements for Title II, Sections 221, 222(a), and 231 Programs

1068.20-1 Applicability.
1068.20-2 Non-Federal-share requirements.
1068.20-3 Waivers of non-Federal share requirements and criteria.
1068.20-4 Pooling of non-Federal share.
1068.20-5 Maintenance of effort.

Appendix A through C to Subpart 1068.20

Subpart 1068.30—Membership Dues and Related Expenses Paid to Professional Organizations (CSA Instruction 6803–6)

1068.30-1 Applicability.
1068.30-2 Policy.
1068.30-3 Criteria for review.

Attachment to Subpart 1068.30

Subpart 1068.42—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801–1 and 6801–1 CH 1)

1068.42-1 Applicability.
1068.42-2 Effective date.
1068.42-3 Definitions.
1068.42-4 Policy.
1068.42-5 Accounting system certification.
1068.42-6 Auditor selection and responsibilities.
1068.42-7 Required preliminary audit survey.
1068.42-8 Required annual audit.
1068.42-9 Federal, State and local audits.
1068.42-10 Maintenance of records.

Appendix A through C to Subpart 1068.42

Subpart 1068.43—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801–1 CH 2)

1068.43-1 Applicability.
1068.43-2 Effective date.
Sec.
1068.43-3 Purpose.
1068.43-4 Definition.
1068.43-5 Policy.
1068.43-6 Grantees with predetermined fiscal year.
1068.43-7 Changes to CSA guidance.

Subpart 1068.50—Cost Principles

1068.50-1 Applicability.
1068.50-2 Purpose.
1068.50-3 Implementation date.
1068.50-4 Supersession.

Appendix to Subpart 1068.50

Attachments to Subpart 1068.50

Subpart 1068.6—Grantee Compliance With IRS Requirement for Withheld Federal Income and Social Security Taxes (CSA Instruction 6810–1)

Authority: Sec. 628, 90 Stat. 806 (42 U.S.C. 2971(g)).

Source: 36 FR 23065, Dec. 3, 1971, unless otherwise noted.

§ 1068.6–1 Applicability of this subpart.

This subpart applies to all grantees receiving financial assistance under the Economic Opportunity Act of 1964, as amended, when the assistance is administered by OEO.

§ 1068.6–2 Purpose.

The purpose of this subpart is to state the necessity for strict compliance with the provisions of Internal Revenue Service regulations for withholding Federal income and social security taxes from employees' wages, and the timely and proper reporting and remittance of these withheld taxes to the appropriate IRS District Director.

§ 1068.6–3 Policy.

(a) Any grantee receiving financial assistance under the Economic Opportunity Act of 1964 will comply with the applicable sections of the Federal tax code by withholding taxes, filing the appropriate tax returns and remitting taxes to the designated Internal Revenue Service District Office.

(b) Failure to comply with IRS requirements for reporting and remitting the withheld taxes will result in

IRS notifying OEO to suspend further payments due the grantee and to refuse to refund, make supplements, or provide any other assistance, as prescribed in section 115 of the 1969 amendments to the Economic Opportunity Act of 1964, until adequate provisions have been made to satisfy tax obligations.

(c) The use of funds withheld from employee's wages for taxes, for program purposes, even with the intent to later restore such funds from another source, is improper and is specifically prohibited.

(d) Section 115 of the Economic Opportunity Act of 1964, as amended, provides:

> Upon notice from the Secretary of the Treasury or his delegate that any person otherwise entitled to receive a payment made pursuant to a grant, contract, agreement, loan or other assistance made or entered into under the Economic Opportunity Act of 1964 is delinquent in paying or depositing (1) the taxes imposed on such person under chapters 21 and 23 of the Internal Revenue Code of 1954, or (2) the taxes deducted and withheld by such person under chapters 21 and 24 of such Code, the Director of the Office of Economic Opportunity shall suspend such portion of such payment due to such person, which, if possible, is sufficient to satisfy such delinquency, and shall not make nor enter into any new grant, contract, agreement, loan or other assistance under such Act with such person until the Secretary of the Treasury or his delegate has notified him that such person is no longer delinquent in paying or depositing such tax or the Director of the Office of Economic Opportunity determines that adequate provision has been made for such payment * * *

§ 1068.6-4 General.

(a) All OEO-funded organizations are required by IRS laws and regulations to withhold income taxes from their employees' wages. This includes those religious, educational or charitable organizations which are exempt from Federal income taxes by IRS ruling under section 501(c)(3) of the Internal Revenue Code.

(1) All grantees, except those who qualify as a 501(c)(3) organization, must provide mandatory social security coverage for their employees. These grantees are liable for taxes imposed under the Federal Insurance Contributions Act. Those agencies who qualify as 501(c)(3) organizations, are exempt from social security taxes (Federal Insurance Contributions Act) unless they elect to provide social security coverage for their employees; however, if they do waive their exemption, they must also deduct the employees' share of FICA taxes from their wages.

(2) Grantees should consult their local IRS Office in order to determine their particular responsibilities in regard to each of these tax liabilities.

(b) All OEO grantees must, if they have not already done so, obtain Form SS-4, "Application for Employer Identification Number," and IRS Publication No. 15, Circular E, "Employer's Tax Guide," from the nearest IRS District Office.

(c) Form SS-4 is to be completed by these organizations with the required information and returned to the appropriate IRS Office. The IRS Office will assign an "Employer Identification Number" and furnish the organization with reporting and deposit forms preinscribed with the address and identification number. The identification number is used by IRS to identify the organization's tax accounts and must be recorded on all reports, remittances and related correspondence.

(d) Circular E provides the detailed definitions, instructions, guidelines, and sample forms related to obtaining an Employer Identification Number, tables for computing tax amounts to be withheld from employees' wages, and depositing and reporting Federal income and social security taxes. Attached to this subpart are the essential procedures and requirements contained in Circular E.

(e) To avoid delay and insure timely processing of grant applications, all applicants, for OEO funds must record their "Employee Identification Number" on the following OEO forms:

CAP Form 3—Community Action Basic Information (section I, Item 6).

CAP Form 87—Delegate Agency Basic Information (section II, Item 6).

OEO Form 303 (Test)—Applicant Agency Basic Information (section I, Item 6).

The forms referred to in § 1068.8-4(e) are available through normal OEO Supply channels.

OEO Distribution Center, 5458 Third Street
NE., Washington, DC 20011.

APPENDIX A TO SUBPART 1068.6

PROCEDURES FOR OBTAINING EMPLOYER IDENTIFICATION NUMBER AND DEPOSITING AND REPORTING WITHHELD FEDERAL INCOME AND SOCIAL SECURITY TAXES

Employer identification number. Each employer shall obtain Form SS-4, "Application for Employer Identification Number," and Internal Revenue Service Circular E, "Employer's Tax Guide." The form and tax guide may be obtained from any office of the Internal Revenue Service or Social Security Administration. Instructions for completion are on the reverse side of Form SS-4. Upon completion, the forms must be filed with the District Director of Internal Revenue with whom Federal tax returns are filed. A copy of the form will be returned with the assigned "Employer Identification Number" recorded thereon. This identification number should be shown on all forms and attachments, and in all correspondence with the Internal Revenue Service and the Social Security Administration.

Payment of withheld income and social security taxes. In most cases, the employer is responsible not only for the employer's contribution of social security tax, but also for the employee tax and the income tax required to be withheld from the employee's wages. The amount of tax withheld by the employer becomes a special fund in trust for the United States. The employer is relieved of liability to any other person for such amount.

In general, the withheld income and social security taxes must be deposited with an authorized commercial bank depository or a Federal Reserve Bank with a Federal Tax Deposit Form 501. Deposits are required to be made as follows.

(a) Every employer who holds more than $100 in social security and withheld income taxes (reduced by any deposits for the quarter) must deposit these taxes on or before the last day of the month following the close of the quarter.

(b) Monthly deposits are required if the total of the social security and withheld income taxes is more than $100 for that month.

(c) Any employer who has withheld more than $2,500 of social security and withheld income taxes for any month of a calendar quarter must make semimonthly deposits of the taxes for the next quarter regardless of the amount.

Quarters	Quarter ending	Due date
January, February, March	Mar. 31	Apr. 30
April, May, June	June 30	July 31
July, August, September	Sept. 30	Oct. 31
October, November, December	Dec. 31	Jan. 31

Form 941 must be filed with the Internal Revenue Service Center for the IRS region in which the grantee or delegate agency is located as prescribed in Circular E. No more than one calendar quarter may be reported on one Form 941. Instructions for preparation of Form 941 are included on its reverse side. Preaddressed forms will be furnished for use by the grantee or delegate agency. Taxes not required to be deposited must be remitted with the return, or at the option of the employer, deposited on Form 501.

Penalties. Both criminal and civil penalties are provided for the willful failure to make returns (Form 941) and payments (Form 501) of tax, or for willfully filing false or fraudulent returns (Form 941).

A penalty is provided for failure, without reasonable cause, to make timely required deposits of taxes.

How to make deposits of taxes. Preinscribed Forms 501 will automatically be furnished the employer after he applies for an identification number.

The employer shall fill in a preinscribed Form 501, "Federal Tax Deposit," in accordance with the instructions printed on the reverse side of that form. Each Form 501, and a single remittance covering the amount of the taxes to be deposited, should be sent or taken to any commercial bank qualified as a depository for Federal taxes, or to a Federal Reserve Bank. The names of authorized commercial bank depositories may be ascertained at a local bank or Federal Reserve Bank. Checks or money orders covering deposits should be made payable to the bank to which the completed Form 501 is taken or sent.

Quarterly return of income tax withheld and social security taxes. Every grantee or delegate agency required to withhold Federal income and social security taxes from wages must file a quarterly return on Form 941, "Employer's Quarterly Federal Tax Return". The dates on which the return and tax payments are due, are as follows:

Records to be kept. Every employer subject to the employment taxes described in this attachment is required to keep all records pertinent to these taxes available for inspection by officers of the Internal Revenue Service if the need should arise. Such records should be kept for a period of at least 4 years after the date the related tax becomes due, or the date the tax is paid, whichever is later.

Subpart 1068.20—Non-Federal-Share Requirements for Title II, Sections 221, 222 (a), and 231 Programs

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 43 FR 52438, Nov. 9, 1978, unless otherwise noted.

§ 1068.20-1 Applicability.

This subpart is applicable to grants funded under title II, sections 221, 222(a), and 231 of the Economic Opportunity Act as amended if the assistance is administered by the Community services Administration.

§ 1068.20-2 Non-Federal-share requirements.

(a) Legislative requirement (secs. 221 and 222(a)). All grants funded under sections 221 and 222(a) of the EOA which become effective on or after October 1, 1978 carry a requirement for a 20 percent matching share. for ongoing grants, the 80/20 matching requirement is applicable to that portion of the time remaining in the grant year. (See Appendix A, re procedures for prorating the non-Federal share for grants to which both the higher rate and the new requirements apply.)

(b) Administrative requirement (231). Beginning October 1, 1979 all grants funded under Section 231 of the Economic Opportunity Act carry a 50% non-Federal share requirement.

[43 FR 52438, Nov. 9, 1978, as amended at 44 FR 47935, Aug. 16, 1979]

§ 1068.20-3 Waivers of non-Federal share requirements and criteria.

Section 225(c) of the EOA as amended also provides that, "The Director may approve assistance in excess of such percentages if he determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purpose of (title II)." Following are notices of waivers for certain programs, communities, and activities. Publication of the following, however, does not preclude the Director from developing additional waiver criteria for other circumstances; however, in the event that such criteria are developed they will be published in the FEDERAL REGISTER.

(a) *Program waivers.* (1) *Community Food and Nutrition* (*222(a)(1)*). Because the requirement of non-Federal share could pose serious obstacles to meeting program objectives on an emergency basis the non-Federal share requirments have been waived for this program since its inception and continue to be waived. The waiver is automatic and does not require a request for waiver.

(2) *Emergency energy conservation program—Crisis intervention* (*222(a)(5)*). Non-Federal share requirements are waived for grants made under section 222(a)(5) for intervention activities to prevent hardship or danger to health due to the emergency nature of these grants. Components include grants, loans, fuel voucher or stamp programs, or payment guarantees; mediation with utility companies or fuel suppliers, warm clothing, and blankets. The waiver is automatic and does not require a request for waiver from grant applicants.

(3) *Emergency energy conservation program—Program Support* (*222(a)(5)*) . Eligible activities under Program Support (training and technical assistance, research and demonstration, and evaluation) are not the type that can generate non-Federal share since they are process-oriented rather than operational in nature. Therefore, the non-Federal-share requirement is automatically waived for Program Support projects funded under section 222(a)(5).

(4) *SEOOs* (*Section 231*). (i) It is recognized that there are circumstances beyond an SEOO's control which inhibit its ability to raise the required non-Federal share or where the imposition of a 50% matching requirement would seriously affect the SEOO's ability to operate non-CSA-funded anti-poverty programs. Therefore, requests for waivers will be considered based on the following criteria:

(A) The State has not been able to appropriate matching funds due to the timing of the legislative calendar;

(B) Substantial progress has been made toward assuring an appropriation for purposes of providing the required match;

(C) Through the direct efforts of the SEOO there has been substantial state anti-poverty and social services activity; and/or

(D) Failure to provide waiver will result in the loss of essential non-CSA-funded social services and antipoverty programs operated by the SEOO.

(ii) The amount of non-Federal share waived under the above criteria may not result in a matching requirement which, in absolute dollar value (cash and/or in kind), is less than that which was required under the terms of the grantee's last grant which carried a 20% matching requirement.

(iii) A request for waiver must be submitted in writing to the appropriate CSA Regional Office along with documentation to support the grantee's contention that at least one of the conditions cited in paragraphs (a)(4)(i) (A) through (D) of this section.

(b) *Activity waivers.* (1) *Crisis relief (natural disasters).* One of the major objectives of non-Federal share is to provide local resources for and to encourage involvement at the local level in the operating programs of CSA grantees. However, to require non-Federal share contributions for grants awarded to provide crisis intervention assistance to communities affected by natural disasters over which there is no control, for example floods and tornadoes, is inconsistent with the major intent of the legislation. Consequently, the Director is exercising his/her authority under section 225(c) of the Economic Opportunity Act of 1964 as amended by waiving the non-Federal share for grants to provide crisis relief as a result of a natural disaster. The waiver is automatic and does not require a request for waiver from the grant applicant.

(2) *Phaseout grants.* (i) In certain instances and under defined procedures, CSA terminates and closes out grantee operations. As necessary, CSA may award additional Federal funds when there is a grantee termination and phaseout action and there are not sufficient funds on hand to meet liabilities of the grantee and/or its delegate agencies to third parties when such costs result from the phaseout activities. To require non-Federal share contributions for grants awarded to meet the legal obligations of grantees is inconsistent with the major intent of the legislation. Consequently, the Director is exercising his/her authority under section 225(c) of the Economic Opportunity Act of 1964 as amended by waiving the non-Federal requirement for a phaseout grant as a result of termination. The grant, however, must include no operational elements, all previously required portions of the work program must have been completed, and there must be documented evidence that the grantee has insufficient funds to meet those liabilities which are costs of phasing out.

(ii) The grantee must formally request a waiver and the above conditions must exist or be satisfied by the grantee prior to consideration of a waiver under this subsection.

(c) *Communities.* (1) *Low-income counties.* (i) A long-standing objective of CSA's exemption policy has been to assure that the poorest counties in the Nation are able to participate in community action programs despite their lack of local economic resources to match Federal grant funds. These exemtions continue.

(ii) CSA's waiver criteria in this instance reflects a percentage of the population below the poverty threshold.

Counties with 35 percent or more of families poor[1] are eligible for waivers of a portion or all of the required NFS. In addition those counties with at least 24.5 percent of families poor [1] may request a waiver of up to 50 percent of the required NFS. Appendices B and C provide complete listings of the eligible counties.

(iii) A request for a waiver must be in the form of a letter accompanying application for a grant and shall state (A) the amount of the non-Federal share which the community can provide, and (B) that the applicant has made a reasonable effort to raise more non-Federal share and has been unsuccessful. CSA may require that additional evidence be submitted in support of these representations.

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[1] 1970 Census of Housing and Population, PC-1(c) series as shown in the 1972 County-City Data Book.

(iv) To compute NFS for a multicounty CAA where one or more counties qualify for waivers, use the following procedure:

(A) Determine each county's NFS on the basis of the relative proportion of total target population in the counties.

Example: A three county CAA with a target population of 100,000 whose Federal assistance requiring NFS is $500,000:

County	Population	Proportion of NFS (percent)	NFS at 20 percent
A	20,000	20	$25,000
B	30,000	30	37,500
C	50,000	50	62,500
Total	100,000	100	125,000

(B) If one or more counties are eligible for waiver the NFS is first computed as noted above. If county A qualifies for and receives a waiver of all NFS, the NFS contribution required of that CAA would be reduced by $25,000.

(C) If county C qualifies for a partial waiver, reduce the $62,500 by the *approved percentage* of NFS waived and reduce the total NFS requirement of that CAA by the resulting dollar figure.

(2) *Indian Reservations, Puerto Rico, the Trust Territories, and the Virgin Islands.* (i) Because of the high incidences of poverty on Indian reservations and in Puerto Rico, the Trust Territories, and the Virgin Islands, any federally recognized Indian tribe on a reservation, or any organization or agency in these areas applying for funds under sections 221, 222(a), and 231 of the Economic Opportunity Act is eligible for a waiver of a portion or all of the non-Federal share requirement.

(ii) A request for waiver must be in the form of a letter accompanying each request for *program year* funding and should be addressed to the community services office which administers grants for that particular area. The letter shall state (A) the period for which the waiver is being requested, (B) the amount of the non-Federal share which the community can provide, and (C) that the applicant has made a reasonable effort to raise the required amount of the non-Federal share and has been unsuccessful. CSA may require that additional evidence be submitted in support of these representations.

(3) *Farmworker-governed organizations (grants under section 222(a)(5), emergency energy conservation services program only).* (i) Because of the relatively recent establishment of most farmworker-governed organizations, and the lack of opportunity to develop relationships with private sector, local governments, and other sources of non-Federal share contributions, CSA has determined requirements of a non-Federal share for grants made to farmworker-governed organizations under section 222(a)(5) of the Act would be unreasonable.

(ii) Therefore, the non-Federal share requirement is waived for grants made under section 222(a)(5) of the Economic Opportunity Act as amended to farmworker-governed organizations.

(4) *Communities faced with severe economic problems.* The provisions of § 1068.22 (CSA instructions 6802-5a and s 6802-5a, CH1) apply only to those grants or portions of grants whose non-Federal share requirement exceeds 20 percent.

[43 FR 52438, Nov. 9, 1978, as amended at 44 FR 47935, Aug. 16, 1979]

§ 1068.20-4 Pooling of non-Federal share.

(a) CSA permits pooling of non-Federal share between exempt and nonexempt counties served by the same CAA.

(b) Pooling of excess non-Federal share among those program accounts funded by the Community Services Administration during a single program year also is acceptable. (NOTE.—This does not allow pooling with other programs authorized under the Economic Opportunity Act which are administered by other Federal agencies, e.g., title V, Headstart and Follow Through, administered by HEW.)

§ 1068.20-5 Maintenance of effort.

(a) Section 225(d) states that no program shall be approved for assistance under sections 221 and 222(a) unless the Director satisfies himself/herself (1) that the services to be provided under such program will be in addition to, and not in substitution for, services previously provided without Federal assistance and (2) that funds or other resources devoted to programs designed to meet the needs of the poor within the community will not be diminished in order to provide any contributions required under section 225(c).

(b) The principal intent of this requirement is to insure that the ongoing level of antipoverty effort in the community is increased. Federal assistance is intended to supplement and raise existing levels of local support for action against poverty, not to replace it.

(c) To insure that the requirements of section 225(d) are satisfied, both of the following conditions must be met:

(1) The applicant must demonstrate that the proposed expenditures, including any amounts claimed as non-Federal share, will represent a net increase in the expenditures from non-Federal sources for similar activities for this purpose. The base period to be used for comparison is fiscal year 1975.

(2) In addition, the applicant shall assure CSA that the prior level of expenditures or contributions within the community which are concerned with poverty will be maintained in the sense that funds have not been and will not be diverted from other activities focusing on the needs of the poor so as to finance the community action programs.

(d) The requirements of section 225(d) apply only with respect to program accounts funded in whole or in part under sections 221 and 222(a) of the Act, and not to activities which are financed under other sections.

APPENDIX A TO SUBPART 1068.20

HOW TO COMPUTE NON-FEDERAL SHARE FOR GRANTS CARRYING BOTH A 20-PERCENT NON-FEDERAL SHARE REQUIREMENT AND A HIGHER RATE

Following are tables and a formula which may be used in computing NFS for grants carrying both a 20-percent NFS requirement and a higher rate.

(NOTE: Since Federal funds are not affected by the change in NFS requirement, forms 314 will not be amended.)

ACTION

Months[1] elapsed from effective date of grant to October 1, 1978	Multiply Federal share by figures in appropriate column to determine new non-Federal share (in dollars)	
	Grant currently carries 40 percent NFS requirement	Grant carries 30 percent NFS requirement
1	0.28472	0.26488
2	.31944	.27976
3	.35416	.29464
4	.38889	.30952
5	.42361	.32440
6	.45833	.33928
7	.49305	.35416
8	.52778	.36904
9	56250	.38392
10	59722	.39880
11	.63194	.41368

[1] Do not count partial months.

You may call the Information and Management Systems staff, CSA Headquarters, 202-254-5300, for assistance in determining NFS for grants carrying NFS requirements other than those indicated above.

APPENDIX B TO SUBPART 1068.20—COMMUNITY SERVICES ADMINISTRATION, COUNTIES WITH 35 PERCENT OR MORE LOW-INCOME FAMILIES [1970]

State and county	Percent of families below low income level
PHILADELPHIA REGION	
Virginia:	
Lee	39.7
West Virginia:	
Braxton	37.4
Calhoun	37.1
Clay	39.6
Gilmer	37.0
Lincoln	38.0
Mingo	36.5
Webster	39.1
ATLANTA REGION	
Alabama:	
Barbour	36.0
Bullock	46.6
Choctaw	35.5
Conecuh	35.5
Crenshaw	38.5
Greene	53.7
Hale	44.7
Lamar	35.0
Lowndes	50.2
Macon	37.4
Marengo	40.4
Perry	41.5

State and county	Percent of families below low income level
Sumter	45.1
Wilcox	46.6
Florida:	
Jefferson	35.1
Washington	35.9
Georgia:	
Atkinson	41.0
Baker	45.7
Brooks	35.2
Burke	43.1
Calhoun	43.0
Clay	51.7
Crawford	35.9
Dooly	39.2
Early	36.5
Hancock	42.0
Jenkins	35.9
Miller	40.2
Quitman	47.1
Randolph	41.8
Stewart	43.0
Taliaferro	41.0
Terrell	35.5
Treutlen	35.0
Union	35.4
Warren	37.8
Webster	41.2
Kentucky:	
Bell	39.3
Breathitt	54.9
Clay	57.6
Clinton	40.0
Cumberland	39.4
Elliott	43.7
Harlan	36.2
Jackson	50.2
Johnson	38.5
Knott	56.6
Knox	48.4
Lawrence	40.0
Lee	48.4
Leslie	55.5
Letcher	40.1
McCreary	53.7
Magoffin	48.9
Martin	53.4
Metcalfe	39.7
Monroe	40.5
Morgan	43.5
Owsley	61.6
Perry	39.6
Rockcastle	36.1
Russell	35.7
Wayne	50.1
Whitley	39.7
Wolfe	59.0
Mississippi:	
Amite	42.1
Attala	37.3
Benton	38.2
Bolivar	44.7
Carroll	42.9
Choctaw	35.5
Claiborne	42.5
Coahoma	42.8
Copiah	35.9
Franklin	37.8
Greene	38.8
Holmes	53.0
Humphreys	53.8
Issaquena	42.7
Jasper	40.5
Jefferson	59.0
Jefferson Davis	39.8
Kemper	48.6
Lawrence	36.9
Leake	38.5
Leflore	36.4
Madison	39.8
Marion	36.8
Marshall	44.1
Montgomery	37.8
Noxubee	47.5
Panola	38.5
Quitman	49.8
Sharkey	46.8
Sunflower	46.2
Tallahatchie	50.0
Tunica	55.4
Walthall	35.9
Wayne	37.3
Wilkinson	47.9
Yalobusha	37.4
Yazoo	42.7
North Carolina:	
Bertie	37.5
Northampton	38.1
Perquimans	35.2
Tyrrell	37.9
South Carolina:	
Clarendon	42.5
Jasper	37.0
Lee	40.1
Williamsburg	40.5
Tennessee:	
Campbell	36.2
Claiborne	38.8
Clay	39.3
Fayette	44.5
Fentress	42.9
Grundy	40.2
Hancock	55.5
Haywood	40.8
Jackson	38.0
Lauderdale	39.6
Overton	35.8
Scott	42.1
CHICAGO REGION	
Illinois:	
Pulaski	35.7
DALLAS-FORT WORTH REGION	
Arkansas:	
Chicot	43.9
Fulton	41.5
Lee	43.8
Lincoln	36.8
Monroe	38.5
Newton	41.9
Phillips	38.1
Searcy	35.4
Stone	41.3
Louisiana:	
Avoyelles	38.3
Catahoula	36.6
East Carroll	51.1
Evangeline	39.4
Franklin	42.1

State and county	Percent of families below low income level
Madison	45.1
Natchitoches	37.9
Pointe Coupee	36.8
Red River	40.4
Richland	37.4
St. Helena	44.3
St. Landry	38.4
St. Martin	36.2
Tensas	50.1
West Carroll	37.5
West Feliciana	39.4
New Mexico:	
Guadalupe	38.5
Mora	57.3
Sandoval	38.3
San Miguel	39.9
Taos	35.9
Oklahoma:	
Adair	41.9
Pushmataha	37.0
Texas:	
Brooks	42.0
Cameron	38.6
Dimmit	51.0
Duval	43.6
Edwards	35.9
Frio	35.5
Hidalgo	42.2
Jim Hogg	46.3
Kinney	45.7
La Salle	48.8
Loving	46.2
Maverick	44.1
Presidio	40.9
Robertson	36.1
San Jacinto	38.3
Starr	52.3
Webb	38.5
Willacy	46.2
Zapata	50.6
Zavala	43.6
KANSAS CITY REGION	
Missouri:	
Oregon	36.2
Ripley	36.5
DENVER REGION	
Colorado:	
Conejos	36.7
North Dakota:	
Sioux	38.2
South Dakota:	
Buffalo	38.8
Shannon	44.6
Todd	40.8
Washabaugh	49.3
Ziebach	41.0
SAN FRANCISCO REGION	
Arizona:	
Apache	46.5
SEATTLE REGION	
Alaska:	
Angoon	97.2
Bethel	58.9
Kuskokwim	55.2
Wade Hampton	67.8

APPENDIX C TO SUBPART 1068.20—COMMUNITY SERVICES ADMINISTRATION, COUNTIES WITH 24.5 PERCENT TO 35 PERCENT LOW-INCOME FAMILIES [1970]

State and county	Percent of families below low income level
PHILADELPHIA REGION	
Maryland:	
Somerset	24.6
Virginia:	
Accomack	25.2
Amelia	26.2
Bath	24.9
Brunswick	25.4
Buchanan	27.2
Buckingham	29.1
Charles City	28.8
Cumberland	33.3
Dickenson	34.0
Fluvanna	27.6
Greensville	29.8
Halifax	26.1
King and Queen	27.1
Louisa	24.5
Mecklenburg	24.7
Middlesex	26.0
Nelson	28.6
Northampton	32.2
Rappahannock	30.5
Richmond	24.6
Russell	25.4
Scott	27.0
Southampton	27.6
Sussex	26.3
Westmoreland	28.9
Wise	27.4
West Virginia:	
Barbour	25.9
Boone	26.5
Grant	28.0
Hardy	26.9
McDowell	29.8
Monroe	29.2
Nicholas	25.2
Pendleton	28.7
Pocahontas	27.7
Preston	26.9
Ritchie	25.0
Roane	27.1
Summers	33.7
Tucker	24.9
Wirt	29.3
ATLANTA REGION	
Alabama:	
Bibb	30.0
Butler	31.5
Chilton	24.8
Clarke	29.8
Clay	28.8
Covington	24.7
Dallas	31.6
De Kalb	29.5
Escambia	25.5
Fayette	25.3
Geneva	25.7

State and county	Percent of families below low income level
Henry	31.9
Lawrence	27.3
Monroe	34.6
Pickens	32.5
Pike	29.9
Randolph	27.5
Russell	28.2
Washington	31.8
Florida:	
Calhoun	34.0
Dixie	25.9
Franklin	31.3
Gadsden	31.2
Hamilton	31.8
Hardee	24.6
Holmes	32.7
Jackson	30.7
Liberty	28.5
Madison	33.5
Sumter	25.9
Suwannee	28.1
Wakulla	26.9
Walton	26.8
Georgia:	
Appling	31.8
Bacon	28.7
Ben Hill	24.5
Berrien	25.5
Bryan	25.3
Chandle	34.7
Clinch	29.3
Coffee	26.4
Cook	25.6
Crisp	26.8
Dawson	25.9
Decatur	33.0
Dodge	29.3
Echols	32.7
Emamuel	29.2
Evans	32.9
Gilmer	24.6
Glascock	33.0
Grady	29.0
Green	26.8
Harris	25.7
Irwin	34.9
Jasper	32.2
Jeff Davis	24.5
Jefferson	32.6
Johnson	32.0
Lanier	26.7
Laurens	26.3
Lee	28.1
Liberty	26.3
Lincoln	29.9
Long	31.8
Mc Intosh	30.3
Macon	34.8
Marion	34.0
Meriwether	26.3
Mitchell	30.2
Montgomery	27.6
Morgan	29.5
Pulaski	29.7
Schley	27.5
Screven	34.5
Sumter	25.9
Talbot	34.6
Tattnall	28.5
Taylor	31.1
Telfair	30.9
Thomas	25.5
Toombs	26.5
Towns	31.2
Turner	26.6
Twiggs	33.5
Washington	33.0
Wheeler	32.7
Wilcox	34.1
Wilkes	26.5
Wilkinson	25.3
Worth	32.5
Kentucky:	
Adair	34.6
Allen	30.1
Bath	31.3
Bracken	25.0
Butler	30.5
Carter	28.8
Casey	30.9
Edmonson	28.2
Estill	33.4
Fleming	26.5
Floyd	34.9
Fulton	25.9
Gallatin	24.6
Grayson	28.6
Hart	27.5
Laurel	34.6
Lewis	28.1
Lincoln	29.9
Marion	26.2
Menifee	32.0
Ohio	24.7
Owen	24.9
Pike	32.2
Powell	28.1
Pulaski	29.3
Robertson	28.9
Rowan	26.9
Todd	25.7
Trigg	24.6
Mississippi:	
Adams	28.7
Calhoun	32.8
Chickasaw	32.1
Clarke	33.0
Clay	25.9
Covington	31.8
Grenada	27.9
Itawamba	25.4
Lafayette	28.6
Lamar	27.8
Lincoln	29.0
Neshoba	30.0
Newton	29.6
Oktibbeha	28.8
Pearl River	28.1
Perry	30.8
Pike	30.8
Pontotoc	32.4
Prentiss	24.7
Scott	32.6
Simpson	30.4
Smith	32.9
Tate	33.2
Tippah	31.8
Union	27.6

State and county	Percent of families below low income level
Washington	34.3
Webster	34.1
Winston	32.9
North Carolina:	
Alleghany	26.6
Anson	27.3
Ashe	28.0
Avery	29.2
Beaufort	25.0
Bladen	30.7
Cherokee	25.2
Chowan	25.0
Clay	34.7
Columbus	28.0
Duplin	29.0
Edgecombe	26.5
Franklin	28.3
Gates	25.7
Graham	24.8
Greene	32.8
Halifax	30.3
Hertford	27.6
Hoke	26.9
Hyde	34.1
Jackson	25.4
Johnston	24.9
Jones	29.8
Macon	24.9
Madison	32.1
Martin	28.9
Mitchell	28.1
Pamlico	29.0
Pender	28.8
Pitt	27.1
Robeson	31.8
Sampson	29.0
Swain	26.9
Warren	34.5
Yancy	30.5
South Carolina:	
Allendale	31.7
Bamberg	28.6
Barnwell	24.7
Berkeley	26.1
Calhoun	34.6
Colleton	31.7
Dillon	33.2
Edgefield	30.3
Fairfield	31.5
Georgetown	29.6
Hampton	31.3
Horry	25.4
McCormick	34.4
Marion	32.1
Marlboro	27.6
Orangeburg	31.4
Sumter	25.9
Tennessee:	
Bledsoe	33.1
Cannon	26.8
Chester	27.1
Cocke	29.3
Crockett	25.1
Cumberland	29.0
Grainger	30.6
Hardeman	31.2
Hardin	30.4
Henderson	25.9
Houston	25.7
Johnson	30.4
Lake	33.2
Lawrence	24.9
Lincoln	25.2
McNairy	30.7
Macon	29.1
Marion	25.1
Meigs	30.0
Monroe	26.1
Morgan	27.6
Perry	27.4
Pickett	33.9
Rhea	25.3
Sequatchie	24.9
Stewart	31.2
Tipton	29.4
Trousdale	30.6
Union	34.6
Wayne	28.2
CHICAGO REGION	
Illinois:	
Alexander	31.8
Pope	29.3
Minnesota:	
Mahnomen	26.4
Todd	24.5
Ohio:	
Adams	27.4
Wisconsin:	
Menominee	34.0
DALLAS-FORT WORTH REGION	
Arkansas:	
Ashley	25.2
Bradley	29.6
Calhoun	29.6
Clay	31.3
Cleburne	33.8
Cleveland	32.1
Crittenden	32.8
Cross	28.7
Dallas	24.7
Desha	34.2
Drew	27.1
Hempstead	28.3
Izard	29.7
Jackson	25.0
Johnson	25.6
Lafayette	33.0
Lawrence	29.5
Logan	27.7
Lonoke	26.2
Madison	33.3
Marion	30.5
Mississippi	29.6
Montgomery	29.7
Nevada	31.9
Ouachita	25.2
Perry	31.2
Pike	24.8
Poinsett	28.6
Prairie	29.4
Randolph	29.7
St. Francis	34.8
Scott	28.5
Sharp	32.9
Van Buren	32.5
White	24.5
Woodruff	34.3

State and county	Percent of families below low income level
Louisiana:	
Acadia	29.6
Allen	30.1
Assumption	30.4
Bienville	34.1
Caldwell	33.7
Claiborne	33.2
Concordia	32.2
De Soto	34.7
East Feliciana	33.8
Grant	29.2
Iberville	30.6
Jefferson Davis	28.1
Morehouse	32.9
Sabine	34.9
Tangipahoa	33.5
Union	27.1
Vermillion	25.2
Washington	26.3
West Baton Rouge	27.3
Winn	31.2
New Mexico:	
De Baca	24.5
Harding	28.3
McKinley	33.7
Rio Arriba	34.7
Socorro	29.5
Torrance	32.6
Union	26.2
Oklahoma:	
Atoka	29.9
Cherokee	28.0
Choctaw	33.4
Coal	34.0
Delaware	31.0
Haskell	26.7
Hughes	29.3
Johnston	31.1
Latimer	29.8
Le Flore	29.4
Love	26.7
McCurtain	32.4
McIntosh	26.8
Okfuskee	34.7
Sequoyah	28.1
Texas:	
Atascosa	28.7
Austin	25.7
Bastrop	27.5
Brewster	27.1
Burleson	26.4
Caldwell	27.7
Camp	32.0
Collingsworth	25.9
Delta	26.9
Falls	34.6
Fayette	28.1
Foard	28.9
Franklin	27.2
Goliad	28.2
Gonzales	28.0
Grimes	34.5
Houston	33.0
Hudspeth	28.2
Jeff Davis	26.5
Jim Wells	26.6
Karnes	32.8
Kenedy	30.1
Kent	25.1
Lamb	25.3
Lavaca	32.2
Lee	26.8
Leon	30.4
Limestone	24.7
Live Oak	26.6
Madison	27.7
Marion	30.9
Martin	25.0
Mason	27.6
Medina	24.8
Menard	27.7
Motley	24.8
Newton	26.0
Panola	24.6
Polk	28.5
Rains	26.5
Real	27.6
Red River	31.8
Sabine	30.9
San Augustine	33.2
San Patricio	25.2
San Saba	30.8
Shelby	26.8
Sutton	26.3
Trinity	28.5
Uvalde	29.0
Val Verde	24.5
Washington	26.4
Wharton	24.7
Wilson	25.7
KANSAS CITY REGION	
Missouri:	
Bollinger	27.4
Butler	27.5
Carter	25.3
Dade	24.8
Dallas	29.6
Douglas	32.5
Dunklin	29.8
Hickory	26.7
Mercer	24.5
Mississippi	33.5
New Madrid	33.4
Ozark	32.9
Pemiscot	34.7
Putnam	28.0
Reynolds	32.6
St. Clair	25.6
Shannon	31.2
Texas	25.6
Washington	25.4
Wayne	30.8
Wright	26.4
Nebraska:	
Boyd	32.4
Cedar	27.7
Keya Paha	31.7
Knox	27.7
DENVER REGION	
Colorado:	
Costilla	34.7
Saguache	32.6
Montana:	
Blaine	25.2
North Dakota:	
Billings	28.0
Rolette	28.9

State and county	Percent of families below low income level
South Dakota:	
Bennett	26.9
Charles Mix	27.8
Corson	32.4
Dewey	31.5
Hutchinson	24.7
Hyde	25.4
Mellette	26.9
Utah:	
San Juan	33.2
SAN FRANCISCO REGION	
Arizona:	
Navajo	32.0
SEATTLE REGION	
Alaska:	
Barrow	27.7
Bristol Bay Division	32.8
Kobuk	33.0
Nome	31.2

[43 FR 52438, Nov. 9, 1978; 43 FR 58376, Dec. 14, 1978]

Subpart 1068.30—Membership Dues and Related Expenses Paid to Professional Organizations (CSA Instruction 6803-6)

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 42 FR 63171, Dec. 15, 1977, unless otherwise noted.

§ 1068.30-1 Applicability.

This subpart is applicable to all grantees receiving financial assistance under the Economic Opportunity Act of 1964 as amended when that assistance is administered by the Community Services Administration.

§ 1068.30-2 Policy.

(a) Allowable Costs. CSA permits the expenditure of grant funds for the payment of membership dues and other related expenses to professional organizations whose purposes are closely related to those of the grant and/or in furtherance of the objectives of the Economic Opportunity Act and within the limitations described below:

(1) Grantees are limited to the purchase of a single agency membership in any appropriate organization(s) which are found acceptable by CSA whether at the state, regional, or national level.

NOTE: This does not limit the number of organizations to which a grantee may belong but rather limits the number of memberships which it may purchase in any one organization.

(2) Memberships may not be purchased in the name of any delegate agency or individual.

(3) Expenditures of grant funds for costs incurred through attendance at events sponsored by professional organizations, including travel and per diem, must be in compliance with the relevant CSA regulations. (Where specific CSA regulations or guidelines do not exist, for example for registration costs, grantees will be guided by costs charged by comparable organizations. Excessive costs will be disallowed.)

[42 FR 63171, Dec. 15, 1977, as amended at 45 FR 64940, Oct. 1, 1980]

§ 1068.30-3 Criteria for review.

(a) Review Criteria. If a CSA funded organization proposes to expend CSA funds for membership in a state, regional or national association, it will assure that:

(1) Its purposes are closely related to that of the grant and to furtherance of the objectives of the EOA;

(2) The membership benefits the program/agency and not merely an individual;

(3) The organization has not been found to be unacceptable by CSA (see (b) below); and

(4) The professional organization to which membership dues will be paid is not providing funds or other support, directly or indirectly, to an organization or organizations which CSA has determined is not an appropriate recipient of membership dues derived from grant funds. (See paragraph (b) of this section.)

(b) Determination of acceptability.

(1) CSA will make a determination as to the acceptability of organizations as recipients of membership dues where warranted. The determination may be based on the findings of audits conducted by CSA or undertaken by a third party on its behalf or other sources of information/data which

will enable CSA to make the following determinations:

(i) That the activities of the organization are in furtherance of the objectives of the EOA, and

(ii) That the organization has an acceptable track record based on, where appropriate, such factors as:

(A) Administrative capability;

(B) Soundness of its fiscal system;

(C) Availability and acceptability of its audits;

(D) Procedures for and conduct of elections;

(E) Federal access to records;

(F) Clear and concise recordkeeping, including travel expenditures.

(2) CSA intends to publish specific criteria and procedures for use by Headquarters and Regional Offices in undertaking audits.

(3) The list of unacceptable organizations will be published as a revision to this subpart and to Attachment A of Instruction 6803-6 whenever there are changes to the list.

(4) Attachment A contains the name(s) of organizations currently found to be unacceptable. All other national, State and regional organizations are determined to be acceptable at this time if they are in conformance with the criteria outlined in § 1068.30-3(a). However, CSA retains the prerogative to undertake reviews of other organizations at any time and subsequently to revise and publish the list. If CSA finds an organization to be unacceptable to receive CSA funds in payment of membership dues, CSA will also consider unallowable any other expenditures of grant funds, effective the date of the determination, which go to support directly or indirectly activities of this organization including travel to meetings or training seminars sponsored by such organization, payment of registration fees at such events, etc.

[42 FR 63171, Dec. 15, 1977, as amended at 45 FR 64940, Oct. 1, 1980]

ATTACHMENT A

LIST OF UNACCEPTABLE ORGANIZATIONS

National Association for Community Development (NACD)

Subpart 1068.42—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801-1 and 6801-1 Ch 1)

AUTHORITY: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942); § 1068.42-8 also issued under sec. 682(e), Pub. L. 97-35, 95 Stat. 519 (42 U.S.C. 9911).

SOURCE: 44 FR 56568, Oct. 1, 1979, unless otherwise noted.

§ 1068.42-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV, and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration. This subpart is not applicable to contractors under CSA procurement contracts.

§1068.42-2 Effective date.

August 5, 1970 (CSA Instruction 6801-1). May 11, 1971 (CSA Instruction 6801-1, Change 1).

§ 1068.42-3 Definitions.

"Delegate agency" means an agency to which a grantee delegates the performance of an entire program account of a grant or a substantial part of a single program account. As used in this subpart the term also refers to "subcontractors" who contract with the grantee to perform any major portion of a CSA funded program.

"Grant-grantee" as used in this subpart, also refers to contracts of assistance and contractors under such contracts respectively.

"Responsible CSA official" means the CSA official in the Headquarters Office, or the Regional Office of CSA, who has authority to award and administer the CSA grant in question.

§ 1068.42-4 Policy.

(a) Before funds will be released to a grantee receiving an initial Community Services Administration (CSA) grant, the grantee, must submit a statement to CSA certifying that its accounting system and that of its delegated agencies meet the standards set forth in section 243(a) of the EOA. See Appendix A of this subpart. Within three (3) months after the effective date of an initial grant, a grantee must have its accounting system surveyed and evaluated by an auditor. On the basis of the auditor's findings and conclusions, the CSA Director or the Director's designee will determine whether the accounting system meets CSA standards and, if not, whether to suspend the grant.

(b) An audit of each grant must be made annually. On the basis of resultant findings and conclusions, the Director or the Director's designee will determine whether any of the costs or expenditures incurred shall be disallowed as charges against grant funds. In the event of disallowance, the Director may seek recovery of sums by appropriate means. The Director may also impose additional requirements to assure that the conditions that gave rise to the disallowance have been corrected and will not recur.

(c) Grantees must require of delegate agencies substantially the same audit responsibilities that CSA requires of grantees. However, grantees remain responsible to CSA for the proper expenditure of and accounting for all grant funds, whether or not delegated to other agencies.

§ 1068.42-5 Accounting system certification.

(a) *General.* The accounting system certification states that the grantee and its delegate agencies (or subcontractors for performance of any major portion of the assisted program) have established an adequate accounting system with appropriate internal controls to safeguard assets, check the accuracy and reliability of their accounting data, promote operating efficiency and encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by CSA.

(1) The certification may be furnished by an independent certified public accountant, an independent State-licensed public accountant, or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to the grantee. The statements in Appendices B and C of this subpart will satisfy CSA's requirements for an accounting system certification.

(b) *New grantees.* A grantee applying for its initial CSA grant shall submit this certification to the granting office as part of the funding request. If an applicant is unable to obtain the certification, it should forward a statement of explanation to the granting office. The granting office may process the application without the statement where it can reasonably be expected that the statement will be furnished at or before the commencement of the grant period (that is when a new organization's accounting system is still in the process of development at the time of application). In no event, however, will any CSA funds be released to the grantee until the proper statement has been submitted.

(c) *On-going grantees.* Although accounting system certifications are usually required only for the initial CSA grant to the grantee, there may be instances when CSA will require a new certification from an on-going grantee. For example, when there has been a significant increase in the amount of funds provided by CSA. An on-going grantee will be notified by CSA if a new certification must be submitted.

(d) *Delegate agencies.* A grantee may not release or commit any grant funds to a new delegate agency unless it has received from that agency an accounting system certification appropriately modeled after those shown in Appendices B and C of this subpart. If an existing delegate agency is to receive a substantial increase in funds from the grantee, a new certification must also be submitted to the grantee. These certifications are to be obtained by the grantee from its delegate agencies for retention among the grantee's records and need not be transmitted to CSA unless CSA requests them. CSA may disallow as a charge against the grant any funds released in violation of the requirement stated in this paragraph.

§ 1068.42-6 Auditor selection and responsibilities.

(a) *Selection of auditor.* If the grantee is a private agency, the services of an independent certified public accountant, or independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, shall be secured. If the grantee is a local government or public agency, or if its accounting records are maintained by a local government or public agency, the auditing official or official governmental auditing agency which customarily conducts the agency's audits may be substituted for an independent auditor provided that the provisions of paragraph (d) of § 1068.42.9 are complied with.

(1) A grantee receiving an initial CSA grant shall, within thirty (30) days of the receipt of the CSA Form 314, Statement of CAP Grant, supply the responsible CSA official and the Regional Auditor with the name of the auditor or auditing organization which it has selected. CSA will notify the grantee if its selection is not acceptable. If no notice is received from CSA within fifteen (15) calendar days of the nomination, the grantee may engage the auditor. The Regional Auditor will provide the auditor with copies of the Audit Guide.

(2) The auditor approved to conduct the preliminary audit survey may also conduct the annual audit. Once an auditor has been selected and approved, it is not necessary to renominate the auditor in subsequent years as long as he/she complies with the provisions of the Audit Guide and CSA directives. However, when a grantee changes its auditor or when CSA notifies the grantee that its present auditor is unacceptable, renomination must take place and approval must again be obtained from CSA.

(3) When Federal audits are performed in accordance with the Audit Guide, they may be acceptable in lieu of an audit by a certified or licensed public accountant. See paragraph (c) § 1068.42-9. The responsible CSA official will determine whether the scheduled completion date of such an audit will satisfy CSA's time requirement.

(4) The grantee shall furnish the auditor with copies of the approved grant proposal, official grant documents, and all applicable CSA directives, including this subpart.

(b) *Auditor's responsibilities.* The auditor selected by the grantee is responsible for conducting a preliminary audit survey and/or annual audit in accordance with provisions of the Audit Guide. The audit survey will be directed toward an evaluation of the adequacy of the grantee's accounting system and internal controls. The survey should determine whether sufficient internal controls have been established to safeguard assets, check the accuracy and reliability of accounting data, promote operating efficiency and encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by CSA.

(1) The annual audit will be for the purpose of determining whether the grantee and its delegate agencies have adequately discharged their financial responsibilities and to evaluate compliance with grant conditions and with CSA directives.

(2) It is therefore essential that the independent auditors be familiar with CSA grant conditions as well as with other Federal requirements, official memoranda and publications of CSA and, particularly, the contents of this subpart. These materials will be furnished by the grantee.

(3) Independent auditors should clearly understand their responsibilities in this area. They must be aware that they are responsible for pointing out, in their report, any matters of audit importance both to the grantee and to CSA. The report should include an evaluation of the accounting system and internal controls and make recommendations for improvements.

(4) The auditor should submit five (5) copies of all reports to the Regional Auditor concurrent with his/her submission to the grantee.

§ 1068.42-7 Required preliminary audit survey.

(a) *Grantee.* Immediately after receipt of CSA Form 314, Statement of

CAP Grant, for an initial CSA grant, the grantee shall arrange for an independent auditor to conduct, with three (3) months after the effective date of the grant, a preliminary audit survey to evaluate the adequacy of the grantee's accounting system and internal controls and ability to meet the standards set forth in section 243(a) of the EOA as detailed in the Audit Guide.

(1) The auditor should submit, within three (3) months after the effective date of the grant, five (5) copies of the survey report to the Regional Auditor concurrent with his/her submission to the grantee.

(2) A preliminary audit survey may also be required when a grantee's refunding grant action includes a significant increase in its funding level. When these situations occur, the grantee will be notified by CSA that a survey is required.

(3) If a survey report itself is unacceptable to CSA (that is, the report does not conform to the requirement in the Audit Guide), the grantee will receive notice of this fact from CSA. In such instances, the cost of the survey may be disallowed as a charge against grant funds.

(4) If the preliminary audit survey conducted by the grantee's auditor does not cover the accounting systems of all delegate agencies, the grantee must comply with paragraph (b) of this section.

(b) *Delegate agencies.* Whenever a grantee is required to secure an accounting system certification from a delegate agency, it shall also require that within three (3) months of the effective date of the delegate agency agreement, a preliminary audit survey of the delegate agency's accounting system be conducted by an independent auditor. This requirement shall be included in the delegate agency agreement. The grantee is responsible for determining, on the basis of the survey report, whether the delegate agency's accounting system and internal controls meet the standards of section 243(a) of the EOA. The grantee shall consult with the responsible CSA official to determine the appropriate action to be taken in those cases where the accounting system of a delegate agency is not adequate. However, the responsibility for ensuring that delegate agencies establish and maintain adequate accounting systems rests with the grantee. CSA may disallow any charges to grant funds resulting from expenditures by a delegate agency after the grantee has received notice of the inadequacy of the delegate agency's accounting system, or after the grantee has failed to require the timely submission by the delegate agency of a preliminary accounting system survey.

(c) *Response to Preliminary Audit Survey Findings.* On the basis of findings and conclusions resulting from the survey, the Director, or the Director's designee, will determine whether the grantee's accounting system and internal controls have been shown to meet the standards of section 243(a) of the EOA and, if not, whether to suspend the grant. The grantee will be advised in writing what further action is needed to satisfy CSA's requirements. If major deficiencies are disclosed, the Director, or the Director's designee, may suspend the grant or advise the grantee in writing that corrective action must be taken within thirty (30) calendar days.

(1) In the event of suspension, the grantee will be given a specified amount of time, which will not exceed six (6) months, within which to establish the necessary systems and controls. In the event of failure to do so within the time allowed, the grant will be terminated pursuant to CSA's published regulations.

§ 1068.42-8 Required annual audit.

(a) *Grantee.* Each grantee shall arrange for an annual audit to ensure that the financial statements present fairly the financial position of the grantee, that the grantee is complying with applicable CSA directives and with general and special grant conditions, and that appropriate financial and administrative procedures and controls have been installed and are operating effectively. In the case of community action agencies and other grantees on a program year basis, the audit shall cover the grantee's prior program year in total unless CSA has approved in writing a different audit period. In the case of grantees not on a program year basis, the audit shall cover the first full year of the grant period (or the entire grant period if less than a year) and audits conducted thereafter shall cover each succeeding year, and the final fraction of a year, if any, of the grant period. Five (5) copies of the report shall be submitted by the auditor to the Regional Auditor concurrent with his submission to the grantee within six (6) months after the end of the program year or grant period audited. CSA grant funds may not be used for more than one audit annually, except where CSA requests in writing additional audits.

(1) If an audit report itself is unacceptable to CSA (that is, the report does not conform to the requirements in the Audit Guide), the grantee will receive notice as to what further action, if any, is necessary to meet CSA's requirements. In such instances, the cost of the audit may be disallowed as a charge against grant funds.

(2) *Audits for Periods Ending on or After October 1, 1981.* With respect to program years or grant periods ending on or after October 1, 1981, the grantee's auditor must submit five (5) copies of the audit report to the Office of the Inspector General, CSA/OCS, at the address specified in § 1050.112(c), within 60 days after the end of the audited program year or grant period, except that audit reports for public grantees shall be submitted within 90 days after the end of the audited period. A grantee may request an extension of this deadline from the appropriate office. An extension of up to 30 days will be granted to a non-public grantee upon a showing of reasonable cause that the grantee, despite special efforts, cannot submit the audit report within 60 days. Further extensions for non-public grantees or any extensions for public grantees will be granted only in extraordinary circumstances.

(b) *Delegate agencies.* The grantee is responsible for either including delegate agencies' administration of grant programs within its own annual audit or of ensuring that separate independent audits are conducted for delegate agencies. Whether or not the delegation of a portion of the grant program has been approved by CSA, the grantee remains responsible for proper accounting for expenditures of grant funds. The Audit Guide contains detailed directions on the inclusion of delegate agency information in the grantee's audit report.

(c) *Response to annual audit findings.* Grantee shall respond in writing to observations and recommendations in annual audit reports when requested to do so by CSA. Unless an extension of time is expressly granted, the response shall be submitted to the responsible CSA official in five (5) copies, within thirty (30) calendar days from the date CSA notifies the grantee of findings and recommendations.

(1) In the response, the grantee may take exception to particular findings and recommendations. The rationale for such exceptions should be clearly set out in the response. The response should point out corrections already made and state what action is proposed and the estimated completion date of such action. Although the grantee need not send the granting office all documentation supporting corrections unless requested to do so, documentation of actions taken is very important and must be available for review during later audits.

(2) CSA will consider the grantee's response and any additional requested information in determining whether specific expenditures of project funds or contributions to the non-Federal share would be disallowed. If any are disallowed, the responsible CSA official will send the grantee written notice of the determination to disallow expenditures. Unless the grantee appeals the determination within thirty (30) calendar days after the date of the notice, the determination will become final.

(d) *Grantee appeals of audit disallowances.* An appeal shall be in writing and shall contain a clear statement of the issue or issues which the grantee wishes to have considered in the appeal. The grantee may include with the appeal statements any supporting facts or arguments which the grantee feels should be considered. Appeals from determinations made by Headquarters officials should be addressed to the Deputy Director, Community

Services Administration, Washington, DC 20506.

(1) Appeals from determinations made concerning regionally funded grants will be addressed to the Regional Director or the Regional Director's designee. Copies of all responses previously submitted by the grantee to the responsible CSA official and other pertinent information must accompany the appeal.

(2) The official reviewing the appeal, or the official's designee, shall consider the appeal, together with any comments submitted by cognizant offices of CSA (a copy of which shall be simultaneously sent to the grantee). In his/her discretion, the reviewing official may offer the grantee an informal hearing at which relevant CSA officials may also be heard. The decision on the appeal shall be final.

(e) *Satisfaction of final audit disallowances.* Unless the grantee receives written notice from CSA granting an extension, all final disallowances shall be satisfied within ninety (90) days of the date on which the disallowance becomes final. Grantees shall satisfy final disallowance through cash payments to CSA unless they have received written notice allowing an alternative means of satisfaction. In some instances, grantees under Title II of the EOA may be permitted to satisfy disallowances through increases in the required non-Federal share in subsequent grants or contracts.

(1) Failure by the grantee to satisfy a final disallowance or take corrective action to remedy deficiencies in its accounting system and internal controls determined by CSA after audit may result in suspension, termination, or other remedial action. The United States reserves the right to bring suit or take other appropriate legal action to recover the amounts in question.

[44 FR 56568, Oct. 1, 1979, as amended at 47 FR 22535, May 25, 1982]

§ 1068.42–9 Federal, State and local audits.

(a) *General.* Audits and examinations of grantee's operations may be conducted by CSA auditors, auditors from the staffs of other Federal agencies, State and local auditors, and the U.S. General Accounting Office. Grantees and delegate agencies must cooperate fully with General Accounting Office (GAO) and CSA auditors when they conduct audits and examinations of grant programs.

(b) *Audits and surveys by CSA.* CSA audits and surveys are designed to provide CSA management with information as to the effectiveness of administrative procedures and controls and to assist the grantee in improving program operations. As such, CSA audits usually supplement, but do not substitute for or duplicate, the work of the grantee's independent auditor.

(c) *Audits and surveys by other Federal agencies.* Grantees that have grants from or contracts with other Federal agencies such as the Department of Defense or Department of Health, Education, and Welfare may be subject to surveys and audits by those agencies. In these instances, the CSA Audit Division, if informed in advance, will try to arrange with the cognizant audit agency to have them audit CSA programs concurrently with their audits of the grantees' other programs. Where such audits meet the requirement of this subpart and are performed in accordance with the Audit Guide, CSA will approve them as acceptable in lieu of an audit by the grantee's auditor.

(d) *Audits and surveys by state and local auditors.* Public grantees may be audited by State and local auditors. Audits performed by these auditors will be acceptable to CSA provided that the auditor has been approved by CSA pursuant to § 1068.42–6: *Provided,* That the auditor maintains the same standards, utilizes similar auditing procedures and qualified personnel, and renders a similar opinion and report as provided for in the Audit Guide. If for any reason the public agency is unable to apply auditing standards equal to those set out in the Audit Guide, an audit by an independent certified public accountant or an independent licensed public accountant will be required.

§ 1068.42–10 Maintenance of records.

Grantees and delegate agencies must maintain appropriate records and accounts to assure a proper accounting for all project funds, both Federal and non-Federal. All financial records, including books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and other related documents must be retained for the time period and in the manner prescribed by CSA's policy retention and custodial requirements for records.

APPENDIX A TO SUBPART 1068.42—GRANTEE FISCAL RESPONSIBILITY AND AUDITING

Section 243 of the Economic Opportunity Act (EOA) of 1964, as amended, states that:

Section 243. "(a) No funds shall be released to any agency receiving financial assistance under this title until it has submitted to the Director a statement certifying that the assisted agency and its delegate agencies (or subcontractors for performance of any major portion of the assisted program) have established an accounting system with internal controls adequate to safeguard their assets, check the accuracy and reliability of the accounting data, promote operating efficiency and encourage compliance with prescribed management policies and such additional fiscal responsibility and accounting requirements as the Director may establish. The statement may be furnished by a certified public accountant, a duly licensed public accountant or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to that agency."

Section 243 "(b) Within three months after the effective date of a grant to or contract of assistance with an organization or agency, the Director shall make or cause to be made a preliminary audit survey to review and evaluate the adequacy of the accounting system and internal controls established thereunder to meet the standards set forth in the statement referred to in subsection (a). Promptly after the completion of the survey, the Director shall determine on the basis of findings and conclusions resulting from the survey whether the accounting system and internal controls meet those standards and, if not, whether to suspend the grant or contract. In the event of suspension, the assisted agency shall be given not more than six months within which to establish the necessary systems and controls, and, in the event of failure to do so within such time period, the assistance shall be terminated by the Director."

Section 243 "(c) At least once annually the Director shall make or cause to be made an audit of each grant or contract of assistance under this title. Promptly after the completion of such audit, the Director shall determine on the basis of resulting findings and conclusions whether any of the costs of expenditures incurred shall be disallowed. In the event of disallowance, the Director may seek recovery of the sums involved by appropriate means, including court action or a commensurate increase in the required non-Federal share of the cost of any grant or contract with the same agency or organization which is then in effect or which is entered into within twelve months after the date of disallowance."

Section 243 "(d) The Director shall establish such other requirements and take such actions as the Director may deem necessary and appropriate to carry out the provisions of this section and to insure fiscal responsibility and accountability, and the effective and efficient handling of funds in connection with programs assisted under this title. These requirements and actions shall include (1) necessary action to assure that the rate of expenditure of any agency receiving financial assistance does not exceed the rate contemplated under its approved program; and (2) appropriate requirements to promote the continuity and coordination of all projects or components of programs receiving financial assistance under this title, including provision for the periodic reprogramming and supplementation of assistance previously provided."

APPENDIX B TO SUBPART 1068.42—GRANTEE FISCAL RESPONSIBILITY AND AUDITING

Statement to be submitted by the appropriate public financial officer when the applicant is a public agency or when the accounting system of a private-nonprofit agency will be maintained by public agency.

(*Address of Regional or Program office of the Community Services Administration, as appropriate.*)

Dear Sirs:

I am the chief financial officer of (*name of public body*) and, in this capacity, I will be responsible for providing financial services adequate to insure the establishment and maintenance of an accounting system for the (*name of applicant*), which is a public (*or non-profit*) agency charged with carrying out a CSA program in (*name of community*). The accounting system will have internal controls adequate to safeguard the assets of such agency(ies), check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency(ies).

Signature of financial officer

Name of financial officer

Title

Name of public body

APPENDIX C TO SUBPART 1068.42—GRANTEE FISCAL RESPONSIBILITY AND AUDITING

Statement to be submitted when applicant is a private-nonprofit agency (or a public agency) whose accounting system will not be maintained by a public agency.

Address of Regional or program office of the Community Services Administration, as appropriate)

Dear Sirs:

I am a certified or duly licensed public accountant and have been engaged to examine and report on the financial accounts of the (*name of applicant*), which is a private-nonprofit organization (*or public agency*) carrying out a CSA program in (*name of community*). I have reviewed the accounting system that this agency has established and, in my opinion, it includes internal controls adequate to safeguard the assets of the agency, check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency.

Signature of accountant

Name of accountant

Name of firm

Subpart 1068.43—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801–1 CH 2)

AUTHORITY: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

SOURCE: 44 FR 56572, Oct. 1, 1979, unless otherwise noted.

§ 1068.43–1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV, and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1068.43–2 Effective date.

August 31, 1971 (CSA Instruction 6801-1, Change 2).

§ 1068.43–3 Purpose.

CSA Instruction 6801-1, now Subpart 1068.42 of this chapter, provides that grantees must have one annual audit which must cover all CSA-funded programs. This subpart clarifies the period of time to be covered by the annual audit in those cases where grantees have received funds from more than one funding office within CSA and the authorized period for expending the funds is not consistent with the grantee's program year.

§ 1068.43–4 Definition.

"A Program Year" means a grantee's 12-month accounting period. For community action agencies this is the funding period for the principal grant that provides funds for most of the grantee's administrative costs. For other agencies funded by CSA this is their usual 12-month accounting period which may or may not correspond with the funding period of their grant(s) from CSA. It should be noted that CSA no longer identifies grantee program years by an alphabetic designator, that is; Program Year A, Program Year B, but is instead awarding funds and identifies grantee expenditures by use of an individual grantee number.

§ 1068.43–5 Policy.

(a) The period of audit coverage will be the grantee's 12-month program year. In cases where CSA program offices award funds for periods that do not coincide with the grantee's program year, the audit will also cover the portion of these funds that were expended during the grantee's program year. Subsequent annual audits will cover the balance of these funds.

(b) An example of the funding actions to be included in the scope of a grantee's annual audit is:

(1) Grantee A had a program year that ended on December 31, 1972, and

has funds from three CSA offices, as follows:

(i) Grant #50100, action 01, funded by the Regional Office for the program year January 1, 1972 to December 31, 1972.

(ii) Grant #50100, action 02, funded by the Regional Office for the period from March 1, 1972 to June 30, 1972.

(iii) Grant #50100, action 01, funded by the Office of Program Development for the grant period May 1, 1972 to October 31, 1973.

(2) Grant #50100 funded by the Regional Office for the grantee's program year is the principal grant under which the grantee operates. The program year of this grant determines the period of audit coverage for the annual audit. The grantee contracts with its Certified Public Accountants (CPA's) to perform an annual audit and provide one report covering the following funding actions:

(i) Grant #50100, action 01 (Regional) would be reported for the program year January 1, 1972 to December 31, 1972.

(ii) Grant #50100, action 01 (Regional) would cover transactions during the period March 1, 1972 to December 12, 1972.

(iii) Grant #50100, action 01 (Headquarters) would cover transactions during May 1, 1972 to December 31, 1972.

(3) The following year's annual audit would provide coverage as follows:

(i) Grant #50100, action 01 (Regional) would be reported for the program year January 1, 1973 to December 31, 1973.

(ii) Grant #50100, action 02 (Regional) would cover transactions during the period January 1, 1973 to June 30, 1973. If this program were refunded, the report would also cover transactions during the period July 1, 1973 to December 31, 1973.

(iii) Grant #50100, action 01 (Headquarters) would cover transactions during the period January 1, 1973 to October 31, 1973. If this program is extended or refunded, the period of audit coverage would cover the period through December 31, 1973.

(c) CSA programs that were not included in the scope of the grantee's last audit of its principal grant before January 1, 1972 because of different funding periods should be audited at the end of the funding period even though this occurs after January 1, 1972 but on a one time basis only. Thereafter, these programs should be included in the first complete audit after January 1, 1972, based on the grantee's program year.

§ 1068.43-6 Grantees with predetermined fiscal year.

(a) Exceptions to the above criteria for determining the period of coverage of the annual audit will be made for those grantees who, prior to receiving funds from CSA, had a fiscal year or 12-month operating period which does not correspond to the program year or funding period under which CSA grants have been awarded and which elect to use such predetermined fiscal year for this purpose.

(b) Since it is CSA's intention to reduce problems associated with the scheduling of annual audits covering programs with varying refunding or termination dates, grantees who wish to exercise this exception should write or contact the CSA Regional Auditor servicing the geographic area in which they are located.

(c) The Regional Auditor will coordinate the grantee's request to change the annual audit report to the organization's fiscal year with the CSA program offices funding the grantee.

(d) Grantees may change the period of audit coverage only after they have received the written approval of the CSA Regional Auditor. The Regional Auditor will also indicate to the grantee what audit coverage is to be provided during the conversion process.

§ 1068.43-7 Changes to CSA guidance.

Amendments to CSA Manual 2410-1 (the Audit Guide) will be forthcoming to reflect the changes to financial statements to be included in annual audit reports as a result of this subpart.

Subpart 1068.50—Cost Principles

Authority: Sec. 602, 78 Stat. 530, (42 U.S.C. 2942).

SOURCE: 45 FR 64940, Oct. 1, 1980, unless otherwise noted.

§ 1068.50-1 Applicability.

The provisions of OMB Circular A-21, Cost Principles for Educational Institutions, OMB Circular A-122, Cost Principles for Nonprofit Organizations and Circular 74-4, Cost Principles applicable to Grants and Contracts with State and Local Governments, are applicable to all grants and agreements made under the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration. All subawards (delegate agency agreements, subcontracts, etc.) are subject to those cost principles applicable to the particular organization concerned, e.g. if a nonprofit grantee enters into a delegate agency agreement with a nonprofit organization Circular A-122 shall apply; however, if that same grantee contracts with a college or university, Circular A-21 shall apply.

§ 1068.50-2 Purpose.

The purpose of this subpart is to implement the cost principles pursuant to OMB Circulars A-122, A-21, and 74-4 by advising organizations, agencies, units of government and educational institutions funded by CSA of their applicability and to incorporate Circular A-122 into CSA's body of published regulations in order to assure that it is readily accessible to nonprofit organizations. Circulars A-21 and 74-4 may be obtained by writing to the Office of Administration, Publications Unit, Room G-236, New Executive Office Building, Washington, DC 20503.

§ 1068.50-3 Implementation date.

The provisions of these Circulars are effective as of October 31, 1980. However, if an organization has an existing award as of October 31, 1980 and does not wish to be governed by these cost principles while under this award, that organization will so inform the CSA Regional or Headquarters office responsible for administering the grant. In such a situation the organization will continue to be bound for the remainder of the funding period by those regulations superseded by the cost principles. However, the cost principles will apply at the start of the next award made to that organization.

§ 1068.50-4 Supersession.

The cost principles published in OMB Circulars A-21, A-122, and 74-4 supersede cost principles previously issued by CSA except those cost principles which have been legislatively mandated.

APPENDIX TO SUBPART 1068.50—OMB CIRCULAR A-122, COST PRINCIPLES FOR NONPROFIT ORGANIZATIONS

[CIRCULAR NO. A-122]

June 27, 1980.

To The Heads of Executive Departments and Establishments

Subject: Cost principles for nonprofit organizations.

1. *Purpose.* This Circular establishes principles for determining costs of grants, contracts and other agreements with nonprofit organizations. It does not apply to colleges and universities which are covered by Circular A-21; State, local, and federally recognized Indian tribal governments which are covered by Circular 74-4; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* This Circular supersedes cost principles issued by individual agencies for nonprofit organization.

3. *Applicability.* a. These principles shall be used by all Federal agencies in determining the costs of work performed by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a nonprofit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a State, local, or federally recognized Indian tribal government, Circular 74-4 shall apply.

4. *Definitions.* a. *"Nonprofit organization"* means any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "nonprofit organization" excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally recognized Indian tribal governments; and (iv) those nonprofit organizations which are excluded from coverage of this Circular in accordance with paragraph 5 below.

b. *"Prior approval"* means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. *Exclusion of some nonprofit organizations.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such nonprofit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Attachment C. Other organizations may be added from time to time.

6. *Responsibilities.* Agencies responsible for administering programs that involve awards to nonprofit organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to the Office of Management and Budget. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to the Office of Management and Budget within 30 days of the date of this Circular.

7. *Attachments.* The principles and related policy guides are set forth in the following Attachments:

Attachment A—General Principles
Attachment B—Selected Items of Cost
Attachment C—Nonprofit Organizations Not Subject to This Circular

8. *Requests for exceptions.* The Office of Management and Budget may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. *Effective Date.* The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions is also permitted by mutual agreement between an organization and the cognizant Federal agency. [CSA funded organizations please note implementation dates in § 1068.50-3].

10. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-4773.

James T. McIntyre, Jr.,
Director.

[Circular No. A-122]

Attachment A

General Principles

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[Circular No. A-122]

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Severance pay
Specialized service facilities
Taxes
Termination costs
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Transportation costs
Travel costs
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ATTACHMENT B

SELECTED ITEMS OF COST

Paragraphs 1 through 50 provide princi-
es to be applied in establishing the allow-
ility of certain items of cost. These princi-
es apply whether a cost is treated as direct
indirect. Failure to mention a particular
m of cost is not intended to imply that it
is unallowable; rather determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. *Advertising costs.*

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 40; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110; or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. *Bid and proposal costs.* (reserved)

4. *Bonding costs.*

a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. *Compensation for personal services.*

a. *Definition.* Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in paragraph g. below). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Government, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in Government-sponsored activities and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see paragraph g. below), and the like, are allowable provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) Provisions for a reserve under a self-insurance program for unemployment compensation or workmen's compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workmen's compensation such payments are allowable in the year of payment with the prior approval of the awarding agency provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extend that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. *Pension plan costs.*

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determnined in accordance with generally accepted accounting principles as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination Insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

h. *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into a good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

i. *Overtime, extra pay shift, and multishift premiums.* See paragraph 27.

j. *Severance pay.* See paragrah 44.

k. *Training and education costs.* See paragraph 48.

l. *Support of salaries and wages.*

(1) Charges to awards for salaries and wages, whether treated as direct cost or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. the distribution of salaries and wages to awards must be supported by personnel activity reports as prescribed in subparagraph (2) below, except when a substitute system has been approved in writing by the cognizant agency. (See paragraph E.2 of Attachment A)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizaitons to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual acitivity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2) above, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under the Fair Labor Standards Act.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see paragraph 6f.(3) and 18.a.(2)(d); pension funds (see paragraph 6.(g)); and reserves for normal severance pay (see paragraph 44.(b)(1)).

8. *Contributions.* Contributions and donations by the organization to others are unallowable.

9. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in paragraph f. below a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the asset involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude.

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching retirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under paragraph e. above, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

10. *Donations.*

a. *Services received.*

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Attachment E, OMB Circular No. A-110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a) above.

b. *Goods and space.*

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Attachment E, OMB Circular No. A-110. The value of the donations shall be determined in accordance with Attachment E. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare, costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 25).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency. 21(2) Capital expenditures for special purpose equipment are allowable as direct costs provided that items with a unit cost of $1000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 42 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Cost of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See paragraph 6. f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are unnecessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see paragraphs 47.b. and d.).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development* [Reserved].

18. *Insurance and indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see paragraph 6.f. and 6.g.(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations.

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Government property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(e) Costs of Insurance on the lives of trustees, officers, or other employees holding positions of similars responsibilities are allowable only to the extent that the insurance represents additional compensation (see paragraph 6). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph B of Attachment A.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

21. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any underrecoveries through negotiation of lump sums for, or ceilings on, indirect costs.

22. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

23. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

24. *Meetings, conferences.*

a. Costs associated with the conduct of meetings, and conferences, and include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 12, *Entertainment costs,* and paragraph 29, *Participant support costs.*

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective. (See paragraph B. of Attachment A.) These costs are allowable provided that they meet the general tests of allowable, shown in Attachment A to this Circular.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

25. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences, sponsored by others when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

26. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

27. *Overtime, extra-pay shift, and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Government will result.

28. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by Government-sponsored authors.

29. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

30. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Government to be conveyed to the Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 34).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Government, are unallowable (also see paragraph 43).

31. *Pension plans.* See paragraph 6. g.

32. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

33. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

34. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to b, c, and d, of this paragraph when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Government awards.

(4) The impact of Government awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Government work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in paragraph b above, retainer fees to the allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see paragraph 47e).

35. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions.

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 18.a.(3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph a. above shall be excluded in computing award costs.

36. *Public information service costs.*

a. Public information service costs include the cost associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

37. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed paragraph 28.

38. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

39. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Government awards, fair wear and tear excepted, are allowable.

40. *Recruiting costs.* The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see paragraph 41c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

41. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in paragraphs b, c, and d, below, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimate) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a

maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4) below, are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of cancelling an unexpired lease, disconnecting and reinstalling household applicances, and purchasing insurance against loss of or damages to personal property. The cost of cancelling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of paragraph b. above. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

42. *Rental costs.*

a. Subject to the limitations described in paragraphs b. through d. of this paragraph, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: Rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed; e.g. depreciation or use allowances, maintenace, taxes, insurance but excluding interest expense and other unallowable costs. For this purpose, a material equity in the property exists if the lease is noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

(1) The organization has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

(2) Title to the property passes to the organization at some time during or after the lease period;

(3) The term of the lease (initial term plus periods covered by bargain renewal options if any) is equal to 75 percent or more of the economic life of the leased property; i.e., the period the property is expected to be economicially usable by one or more users.

43. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto necessary for the proper performance of the award are allowable unless:

(1) The Government has a license or the right to free use of the patent or copyright

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

44. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

45. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable provided the charges for the services meet the conditions of either b. or c. of this paragraph and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under paragraph A.5. of Attachment A.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to paragraph A.6. of Attachment A are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

46. *Taxes.*

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Government.

47. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default. (See paragraph 4.a. of Attachment I, OMB Circular No. A-110; and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced for the award; except when grantees are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2) of this paragraph. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractor/subgrantees; provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

48. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charged by the educational institution.

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in b. and c. above.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 22, and 42.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under paragraphs b. and c. of this paragraph may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

49. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 23). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

50. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to paragraphs b. through e. below, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 40 and 41, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

[Circular No. A-122]

ATTACHMENT C

NONPROFIT ORGANIZATIONS NOT SUBJECT TO THIS CIRCULAR.

Aerospace Corporation, El Segundo, California

Argonne Universities Association, Chicago, Illinois

Associated Universities, Incorporated, Washington, DC

Associated Universities for Research and Astronomy, Tucson, Arizona

Atomic Casualty Commission, Washington, DC

Battelle Memorial Institute, Headquartered in Columbus, Ohio

Brookhaven National Laboratory, Upton, New York

Center for Energy and Environmental Research (CEER), (University of Puerto Rico)
Commonwealth of Puerto Rico, Charles Stark Draper Laboratory, Incorporated
Cambridge, Massachusetts, Comparative Animal Research Laboratory (CARL)
(University of Tennessee), Oak Ridge, Tennessee
Environmental Institute of Michigan, Ann Arbor, Michigan
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Institute, Chicago, Illinois
Institute for Defense Analysis, Arlington, Virginia
Institute of Gas Technology, Chicago, Illinois
Midwest Research Institute, Headquartered in Kansas City, Missouri
Mitre Corporation, Bedford, Massachusetts
Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana
National Radiological Astronomy Observatory, Green Bank, West Virginia
Oak Ridge Associated Universities, Oak Ridge, Tennessee
Project Management Corporation, Oak Ridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
Sandia Corporation, Albuquerque, New Mexico
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
Universities Corporation for Atmospheric Research, Boulder, Colorado
Nonprofit Insurance Companies such as Blue Cross and Blue Shield Organizations
Other nonprofit organizations as negotiated with awarding agencies.

PART 1069—GRANTEE PERSONNEL MANAGEMENT

Subpart 1069.1—Employee Participation in Direct Action (CSA Instruction 6907-3)

Sec.
1069.1-1 Applicability of this subpart.
1069.1-2 Definition of "direct action."
1069.1-3 Policy.
1069.1-4 Permissible direct action.
1069.1-5 Unallowable direct action.
1069.1-6 Distinction between staff actions and private actions of employees.
1069.1-7 Responsibilities of community action agencies.
1069.1-8 Enforcement.

Subpart 1069.2—Limitations With Respect to Unlawful Demonstrations, Rioting and Civil Disturbances (CSA Instruction 6907-2)

1069.2-1 Applicability of this subpart.
1069.2-2 Policy.
1069.2-3 Enforcement.
1069.2-4 Reminder concerning antiriot provision in the Economic Opportunity Amendments of 1966.

Subpart 1069.5—[Reserved]

Subpart 1069.6—Policy Guidance on Lobbying Activities (CSA Instruction 6907-01)

1069.6-1 Applicability of this subject.
1069.6-2 Purpose of this subpart.
1069.6-3 Effective date.

Subpart 1069.8—Restrictions on Political Activities (CSA Instruction 6907-1a)

1069.8-1 Applicability.
1069.8-2 Definitions.
1069.8-3 Policy.
1069.8-4 Requirement that community action agencies adopt rules.
1069.8-5 Restrictions on political activities of all CSA grantees and delegate agencies.
1069.8-6 Additional restrictions on political activities of employees of CAAs, public grantees, and public delegate agencies.
1069.8-7 Additional precautions.
1069.8-8 Enforcement.

APPENDIX A AND B TO SUBPART 1069.8

Subpart 1069.9—Policy and Procedures on $18,000 Per Year Salary Limitation (CSA Instruction 6903-1a)

1069.9-1 Applicability.
1069.9-2 Reference.
1069.9-3 Definitions.
1069.9-4 Policy.
1069.9-5 Clarification of effect of $18,000 limitation.
1069.9-6 Criteria and procedures for CSA exceptions to $18,000 limitation.

Sec.

Subpart 1069.26—Social Security Coverage for Employees Under CAP Grants (CSA Instruction 6906-01)

1069.26-1 Applicability.
1069.26-2 Effective date.
1069.26-3 Purpose.
1069.26-4 Identification of employer for social security purposes.
1069.26-5 Where the employer is a private nonprofit organization.
1069.26-6 State and local governmental agency as employer.
1069.26-7 Indian Tribal Council or similar tribal organization as employer.

Subpart 1069.28—Prohibition Against Acceptance of Gifts and Gratuities (CSA Instruction 6909-1)

1069.28-1 Applicability.
1069.28-2 Effective date.
1069.28-3 Definition.
1069.28-4 Policy.

Subpart 1069.1—Employee Participation in Direct Action (CSA Instruction 6907-3)

AUTHORITY: Sec. 213, 81 Stat. 695; 42 U.S.C. 2796.

SOURCE: 33 FR 16567, Nov. 14, 1968, unless otherwise noted.

§ 1069.1-1 Applicability of this subpart.

This subpart applies to all full-time and part-time employees and volunteers of grantees and delegate agencies while engaged in carrying out a program financially assisted under the provisions of Title II or III-B of the Economic Opportunity Act of 1964, as amended.

§ 1069.1-2 Definition of "direct action."

As used in this subpart, "direct action" means a group activity designed to communicate collective grievances and to request decision or remedial action—e.g. picketing, parades or marches, sit-ins, rallies, or assemblies.

NOTE: The above is a definition of all direct action, including forms of direct action which are legal and are permissible under this subpart.

§ 1069.1-3 Policy.

(a) One of the premises of the Community Action Program is that poverty can be overcome as the poor gain the capability to play an effective role in the community processes which so vitally affect them. Maximum feasible participation of the poor is both a mandate of the Economic Opportunity Act and a focal point of OEO policy. The community action agency's duties of advocacy on behalf of the poor stem from those factors.

(b) In the course of carrying out their advocacy responsibilities, community action agencies may sometimes determine that the best available (or the only apparent) means for self-help involvement of the poor lead to such direct action activities as peaceful and lawful assembly to obtain redress of grievances from those believed capable of alleviating them.

(c) However, to recognize the legitimacy and importance of direct action is not to say that any and all direct action activities, under all circumstances, are either appropriate or desirable. Thus, employees and volunteers of community action agencies and other Title II and III-B grantees and delegate agencies are prohibited, in connection with the performance of their duties, from participating in, planning, or otherwise assisting in any unlawful picketing or protest or other form of direct action which is unlawful. Community action grantees and delegate agencies have the responsibility of preventing such illegal actions on the part of their staff. Toleration by agency officials of such behavior may be considered cause for suspending or terminating the grant.

(d) The rules set forth in this subpart are not intended to represent a redirection of the Community Action Program or a change in its mission. It is very difficult to establish general rules which clearly distinguish between legal and illegal forms of direct action or which determine the extent and limits of an individual's responsibility when participating in a group activity during which some illegal acts are committed. The rules of this subpart are a general guide, but each agency will have to interpret the rules with good judgment and enforce them fairly and with full knowledge of the facts. Agencies should avoid an interpretation which in any way restricts constitutionally-protected activities or an individual's constitutional rights. Grantees and delegate agencies may consult the appropriate OEO Regional or Headquarters office for advice as to whether a certain activity would be permissible under this subpart. It is the primary responsibility of the local agency, however, to enforce this subpart in a manner which prevents illegal direct action but which also insures that community action, which encompasses a variety of legal direct action, is not stifled.

§ 1069.1-4 Permissible direct action.

(a) Lawful direct action is permissible, and often necessary, as an intermediate step in promoting institutional changes that can lead to permanent improvements in the community's efforts to eliminate the causes and consequences of poverty.

(b) Community action personnel must seek to channel feelings of frustration among the poor into constructive efforts that will improve their conditions without encouraging illegal or destructive actions. Community action agencies may play an effective role by bringing the needs, concerns and grievances of the poor to the attention of responsible public and private officials or groups.

(c) Such forms of direct action as a public rally to demonstrate for the adoption of a more stringent housing code, picketing in support of sewage facilities in a poor neighborhood, or publicizing a selective buying campaign against merchants who discriminate may sometimes be necessary. However, such direct action must meet the following tests of permissibility in order for a community action employee or volunteer to participate while in performance of his duties:

(1) It must not be forbidden under § 1069.1-5.

(2) It must be directly related to the program objectives of the grantee or delegate agency.

(3) It must have been planned as a result of a decision by a neighborhood or other representative group or by program beneficiaries, not solely by staff workers. Direct action activities are a legitimate part of community action only to extent that they present a genuine expression of the needs, desires, and formulated demands of the neighborhood itself, determined in a democratic fashion after consideration of the ends to be achieved and of the advantages and disadvantages of the various alternative courses of action. In this process, program staff members can provide assistance and information but must not seek to impose their own views.

§ 1069.1-5 Unallowable direct action.

(a) No employee or volunteer engaged in carrying out the program of an agency financially assisted under Title II or III-B shall, while in performance of his duties:

(1) Plan, participate in, or provide assistance to others in carrying out any form of direct action which is in violation of Federal, State, or local law or an outstanding injunction of any Federal, State, or local court.

(2) Plan, participate in, or provide assistance to others in carrying out any form of direct action which is designed with the intent to involve physical violence, destruction of property, or physical injury to persons. On the contrary, local agency staff should affirmatively do what they can to prevent such activities and to discourage any direct action that is violent in manner or purpose or is calculated to incite civil disorders.

(3) Commit any actions in connection with riots, political activity, or lobbying which are prohibited by Community Action Memo 66 or OEO Instructions 6907-1 or 6907-2.[1]

(b) Any employee who participated in a form of direct action which as planned and initially carried out is legal and permissible under § 1069.1-4, but during which some illegal acts are committed by individuals, is responsible only for his individual actions.

§ 1069.1-6 Distinction between staff actions and private actions of employees.

(a) Whether in a particular instance an employee may be considered to be acting in his capacity as a private citizen, and therefore to be generally exempt from the limitations of this subpart, depends less on the question of whether the person is formally on duty (i.e., whether the unlawful direct action takes place during his regular working hours), than on the question of the employee's relationship to the group which is engaged in the activity. Where this relationship is such that the participants or the public might reasonably conclude that he is acting as an employee (for example, because as part of his job he has been working with the participating group, or in the neighborhood with which they are identified), he should consider himself subject to the restrictions on involvement in illegal direct action; and any doubt should be resolved in this direction. This is so regardless of the time at which the event occurs, or whether the employee is, as a formal matter, on or off duty. It follows that no employee may avoid the limitations by simply taking leave time, or relying upon the fact that a given activity occurs in the evening or on a weekend.

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[1] Not filed with the Office of the Federal Register.

(b) Although volunteers are not included in the discussion in paragraph (a) of this section, they must take reasonable precautions against identifying their off-duty activities with a grantee or delegate agency.

§ 1069.1-7 Responsibilities of community action agencies.

(a) Section 213(a) of the Economic Opportunity Act requires each community action agency to adopt rules for itself and its delegate agencies which define staff responsibilities in regard to advocacy on behalf of the poor in such a way as to prohibit participation in unlawful direct action. This requirement will be considered to be met by the agency's adoption of the provisions of this subpart and by making these rules available to all employees in writing.

(b) If, however, the agency wishes to adopt its own rules it may do so, providing that the provisions of this subpart are included in those rules and that none of these provisions are contradicted by the agency's additional rules.

(c) In either case, the agency must specifically inform employees and volunteers of the provisions contained in such rules and of the possible sanctions for noncompliance.

§ 1069.1-8 Enforcement.

(a) The initial and primary responsibility for enforcement of this subpart in connection with projects assisted under Title II and III-B is with the local grantees and delegate agencies responsible for those projects. Each such agency will be expected to investigate and to take appropriate action in response to any specific information which comes to its attention concerning possible violation of the requirements of this subpart. Any personnel actions against employees resulting from such investigation are subject to the grievance procedures required under CA Memorandum 23-A[1] affording the employee a prompt and fair consideration of his grievance.

(b) Each grantee or delegate agency shall promptly inform the OEO Regional or appropriate grant approval office of any allegation charging a person within its jurisdiction with violating the provisions of this subpart indicating the action that the agency is taking regarding the matter.

Subpart 1069.2—Limitations With Respect to Unlawful Demonstrations, Rioting and Civil Disturbances (CSA Instruction 6907-2)

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

§ 1069.2-1 Applicability of this subpart.

This subpart applies to all full-time and part-time employees and volunteers engaged in carrying out the program of any organization financially assisted under the Economic Opportunity Act of 1964, as amended.

[33 FR 17143, Nov. 19, 1968]

§ 1069.2-2 Policy.

(a) Each grantee and delegate agency is required to take appropriate steps to insure that financial assistance under the Economic Opportunity Act is not employed to aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance. In particular, each agency must take such action as is appropriate in the light of local circumstances to insure that persons employed in connection with assisted programs, as well as volunteers, do not use their position in the program to plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance. Toleration on the part of agency officials of such behavior by their employees may be considered cause for suspending or terminating the grant.

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[1] Not filed with Office of Federal Register.

(b) Rioting and similar violence are wholly inconsistent with the goals of community action. Not only do they undercut the effort to bring the poor into the mainstream of community life, but the harm they do falls most heavily on the poor.

(c) Community action agencies and other CAP grantees have additional responsibilities, however, beyond insuring that no one uses the program to foster violence. Because of its important role as a link between the poor and the public and private agencies which can help solve some of the problems of poverty, a community action agency or other CAP grantee has an important role (1) in developing grievance-response mechanisms between residents of poor neighborhoods and local government agencies and other institutions, and (2) if violence should occur or be threatened, in opening channels of communication between the disaffected elements and the community leadership. The report of the National Advisory Commission on Civil Disorders cited several examples of constructive counterriot measures undertaken by community action agencies. In addition the Commission highlighted the significance of efforts to involve the poor through "maximum feasible participation" in program development and administration and in community decision-making as effective measures to counter the causes and symptoms of riots.

(d) The preceding subpart "Employee Participation in Direct Action," of this part discusses lawful demonstrations and other types of direct action in which CAP grantees may engage.

[33 FR 17143, Nov. 19, 1968]

§ 1069.2-3 Enforcement.

The initial and primary responsibility for enforcement of this subpart rests with local grantees and delegate agencies. Such agencies shall—

(a) Take all feasible measures to prevent the employment in their programs of persons who are likely to use their positions as agency employees to promote violence or unlawful disorder. This shall not be construed to prohibit automatically the hiring of persons with prior criminal records. Policies governing the hiring and rehabilitation of persons with prior conviction records are found in Community Action Memo 23-A.[1]

(b) Terminate any employee, or discontinue using the services of any volunteer, who the agency determines, on the basis of substantial and material evidence, has been using his position with the agency to promote violence or disorder. Such personnel actions are subject to the grievance procedures required under CA Memorandum 23-A[1] affording the employee a prompt and fair consideration of his grievance.

[33 FR 17143, Nov. 19, 1968]

§ 1069.2-4 Reminder concerning antiriot provision in the Economic Opportunity Amendments of 1966.

Section 1201 of the Economic Opportunity Amendments of 1966 provides that no funds appropriated for the fiscal year 1967 could be used "to provide payments, assistance, or services, in any form, with respect to any individual who is convicted, in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to properly or injury to persons, found to be in violation of Federal, State, or local law designed to protect persons or property in the community concerned." This law continues to apply to the use of all funds granted during the fiscal year 1967 (July 1, 1966, to June 30, 1967). Note that it bars benefits to, as well as employment of, persons convicted of certain crimes in connection with riots and group disorders.

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[1] Not filed with Office of Federal Register.

[33 FR 17143, Nov. 19, 1968]

Subpart 1069.5—[Reserved]

Subpart 1069.6—Policy Guidance on Lobbying Activities (CSA Instruction 6907-01)

AUTHORITY: Sec. 602(n), 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 38 FR 6896, Mar. 14, 1973. Redesignated at 38 FR 14172, May 30, 1973, unless otherwise noted.

§ 1069.6-1 Applicability of this subject.

This subpart applies to all grants made under the authority of titles II, III-B and VII of the Economic Opportunity Act of 1964, as amended, if the assistance is administered by OEO.

§ 1069.6-2 Purpose of this subpart.

Many of the problems which cause or aggravate poverty are bound up with harsh or outmoded laws. Others can be most effectively attacked by the passage of new legislation. Community action is thus inevitably concerned with the shape of the laws which affect the poor. On the other hand, there are necessarily very sharp limitations on the use of project funds by grantee and delegate agencies to influence the passage or defeat of legislation. Moreover, there are certain kinds of lobbying which interfere with the work of legislatures and thus impair the basic processes of democratic self-government. The primary purpose of this support is to identify essential restrictions on lobbying activities by grantees and delegate agencies that receive OEO funds under titles II, III-B, and VII of the Economic Opportunity Act. The subpart also serves as a reminder that under Federal (and many State) tax laws, private nonprofit agencies may endanger their capacity to receive tax-deductible contributions if they engage in substantial lobbying activities.

(a) *Restrictions on lobbying with project funds.* Project funds may not be used to support any of the following:

(1) Any activity which is planned and carried out in such a manner as to disrupt the orderly conduct of business by Congress or any other legislative body. This includes, but is not limited to, any disruptive action carried on in the chambers of Congress or any other legislative body or in any capitol or legislative office building.

(2) Any demonstration, rally, picketing, or other form of direct action aimed at the family or home of a member of a legislative body for the purpose of influencing his actions as a member of that body.

(3) Any campaign of advertising carried on through commercial media for the purpose of influencing the passage or defeat of legislation.

(4) Any campaign of letter writing, of other mass communications, or of mass visits to individual members of Congress or State legislatures for the purpose of influencing the passage or defeat of legislation. This restriction does not prohibit purely informational and educational activities involving target areas and groups.

(5) Project funds may not be used to pay dues or to support any organization or group which devotes or contributes any of its resources from whatever source to any activity, the purpose of which is to influence legislation or to politicize. For purposes of the above, the amount of resources devoted to such activity is immaterial.

These restrictions on use of project funds apply to Federal and matching non-Federal shares of approved program budgets under Titles II, III-B and VII of the Economic Opportunity Act and include the use of equipment, material, and facilities and employee time and services which are either paid for with project funds or contributed to project funds. These restrictions are not intended to limit the rights of individuals to express their personal views on public issues so long as they do so in their capacity as private citizens rather than employees. Nor are they intended to limit the freedom of local agencies to express their views on legislation so long as project funds are not used in violation of the foregoing limitations.

(b) *Reminder concerning tax implications of lobbying.* Under Federal income, estate, and gift tax laws, gifts made to private nonprofit organizations which devote a substantial part of their activities to carrying on propaganda or other activities aimed at influencing legislation, are not considered tax deductible "charitable contributions." This applies not only to Federal and State legislation but also to the legislative actions of county and city councils and similar local bodies. Many State tax laws contain similar provisions.

(1) In view of these tax laws, private nonprofit grantee and delegate agencies should bear in mind that if they devote any substantial part of their activities to lobbying efforts, they may be endangering their ability to receive tax-deductible contributions. Such contributions may represent an important means of providing the non-Federal share required in programs assisted under sections 221 and 222(a) of the Economic Opportunity Act. They also enable many local agencies to carry out other programs of assistance to the poor, apart from the Act.

(2) There are no published rules defining what is meant under the Federal tax laws by the term "substantial" lobbying activities. In cases of doubt local agencies should seek private tax counsel or contact the nearest field offices of the Internal Revenue Service and State tax authorities.

§ 1069.6-3 Effective date.

Section 1069.6-2(a)(5) is effective on April 13, 1973. The other portions of this subpart took effect on June 20, 1967.

[38 FR 14172, May 30, 1973, as amended at 38 FR 14260, May 31, 1973]

Subpart 1069.8—Restrictions on Political Activities (CSA Instruction 6907-1a)

AUTHORITY: 5 U.S.C. 1501-03, as amended by Pub. L. 93-443; 42 U.S.C. 2796, 2942(n), and 2943 (Secs. 213, 602(n), and 603 of the Community Services Act of 1974).

SOURCE: 41 FR 15009, Apr. 9, 1976, unless otherwise noted.

§ 1069.8-1 Applicability.

(a) This subpart is applicable to all grantees and delegate agencies funded under Titles II, III-B, and VII of the Community Services Act of 1974 when the assistance is administered by the Community Services Administration.

(b) NOTE: All grantees and delegate agencies are subject to §§ 1069.8-3, 1069.8-5, 1069.8-7 and 1069.8-8. Community Action Agencies (CAAs), whether public or private, are further subject to § 1069.8-4 and 1069.8-6. All other public grantees and all public delegate agencies are also further subject to § 1069.8-6. Furthermore, some restrictions apply only to employees of affected agencies, while others apply to board members and volunteers as well. The applicability of the different sections of this subpart to the various classes of agencies and persons is presented graphically in Appendix B to this subpart, as well as summarized at the beginning of each section.

§ 1069.8-2 Definitions.

(a) *Public Agency.* The executive or legislative branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof.

(b) *Delegate agency.* An agency to which a grantee delegates the performance of an entire program account of a grant or a substantial part of a single program account. Venture subsidiaries of community development corporations (CDCs) or agencies receiving only Investment Capital funds (cost category 2.5) from a CDC are *not* considered delegate agencies.

(c) *Educational or research organization.* A private or public educational institution, establishment, agency, or system supported in whole or in part by State or local public funds or by a recognized religious, philanthropic, or cultural organization. CAAs are *not* considered educational or research organizations.

(d) *Employee.* A *paid* employee, including (unless otherwise specified) trainees and enrollees.

(e) *Board member.* A member of a governing board, administering board, or advisory board or committee.

§ 1069.8-3 Policy.

(a) Grantee and delegate agencies must administer CSA-assisted programs in a politically nonpartisan manner, and must avoid actions which can reasonably be construed as intended to favor one political party over another or to influence the outcome of any election for public or party office. The use of program funds, the provision of services and the assignment of personnel must not result in the identification of the program with any partisan political activity or with any nonpartisan political activity which is designed to further the election or defeat of a candidate for public or party office. In addition, grantee and delegate agencies may not use program funds, the provision of services, or the assignment of personnel in connection with voter registration activity or with transporting voters or potential voters to the polls.

(b) Anti-poverty programs are, in many communities, live political issues and will often include activities which may become the subject of political controversy. Grantee and delegate agencies may, of course, undertake activities dealing with issues related to their basic program responsibilities. In carrying out their basic mission and goals grantees and delegate agencies may actively engage in campaigns connected with constitutional amendments, referenda, municipal ordinances, law reform and lawful attempts to influence government officials to respond to the grievances of the poor. Grantee and delegate agencies need not avoid such activities merely because partisan officials or candidates for public office may take or have taken positions with respect to the issue. Agency officials acting in their official capacities must, however, deal with questions which have become a subject of political controversy on their merits and not in terms of whether they are supported or opposed by a particular party or candidate.

(c) Except as provided in this subpart, employees of grantees and delegate agencies are free to engage in various kinds of political activities during their off-duty hours and in their private capacities. A broad range of participation in elections is permitted. All employees are expected, however, to avoid (to the greatest extent possible) any identification of their off-duty activities with the CSA-supported program.

§ 1069.8-4 Requirement that community action agencies adopt rules.

(a) Section 213(a) of the Community Services Act requires each community action agency (CAA) to adopt rules designed to assure that its programs and programs of its delegate agencies are conducted in a manner which is free from any taint of partisan political bias. This requirement will be considered to be met by the agency's adoption of the provisions of this subpart and by making these rules available to all employees in writing.

(b) If, however, the agency wishes to adopt its own rules it may do so, providing that the provisions of this subpart are included in those rules and that none of these provisions are contradicted by the agency's additional rules.

§ 1069.8-5 Restrictions on political activities of all CSA grantees and delegate agencies.

(a) This section of this subpart contains categories of restrictions applied by the Community Services Act and by Chapter 15, Title 5 of the United States Code (formerly known as the Hatch Act). These restrictions apply to all grantees and all delegate agencies (except educational and research organizations; see § 1069.8-5(c)), whether they are public or private, or whether they are CAAs or other agencies.

(b) These restrictions apply to the use of program funds, the provision of services, and the assignment of agency personnel in a manner which identifies the program with partisan political activity, nonpartisan activity associated with a candidate or faction in an election for public office, voter registration activity, and the transportation of voters to the polls. These restrictions are, in a broad sense, designed to prohibit the use of CSA funds for certain purposes. They apply to all grantee and delegate agency personnel. Insofar as the individual employee is concerned, however, these restrictions deal only with what he or she does as an employee.

(c) Prohibited political activity.[1] The following restrictions apply to all employees, volunteers, and board members, except that restrictions (1) and (2) do not apply to employees of educational or research organizations. Employees, volunteers, and board members may not:

(1) Use their official position, authority, or influence with the agency for the purpose of interfering with or affecting the result of an election or a nomination for a party or public office.

(2) Directly or indirectly coerce, attempt to coerce, command or advise an employee or any other person who is subject to these restrictions to pay, lend, or contribute anything of value or to contribute personal services to a party, committee, organization, agency or person for political purposes.

(3) Use program funds for any political purposes or to influence any election for public or party office.

(4) Permit the use of equipment or premises purchased or leased with program funds for any political purpose or to influence outcome of any election for public or party office. This restriction applies only to facilities when under the control of the grantee or delegate agency. For example, if an agency leases a facility during certain hours only, the landlord may of course use the facility as he wishes during other hours.

(5) Discriminate, or threaten or promise discrimination, against or in favor of any employee or beneficiary of the program, or any potential employee or beneficiary, because of his political affiliations or beliefs, or require any applicant, employee or beneficiary to disclose his political affiliation.

(6) Offer any person employment, promotion or benefits under the program as a reward for the support or defeat of any political party or candidate for public or party office, or threaten or create disadvantage in employment or deprivation of benefits as a penalty for such support, except that such a person may be deprived of employment or subject to lesser penalties for engaging in activities which are forbidden by this subpart.

(d) Voter registration and transportation activity.[2] (1) Employees and volunteers of all grantees and delegate agencies may not, *while carrying out the program of their agencies,* engage in voter registration activity or in transporting voters or prospective voters to the polls. (Board members are not included in this restriction.) This restriction applies to the use of program funds, agency facilities or equipment, as well as to the provision of services and the assignment of personnel. All persons may participate in voter registration during their off-duty hours, so long as they avoid identification of such off-duty activities with the CSA-supported program.

(2) A grantee or delegate agency may properly conduct a citizenship education program which includes, as part of the curriculum, information about the mechanics and function of voter registration. Such a program may be valuable in educating the poor as to the legitimate and constructive roles they as citizens may play in local community life and in the American democratic process. However, the program must be informational and not designed to solicit registration. Furthermore, program funds may not be used in any way to aid registration campaigns. Door-to-door solicitations and mass mailing campaigns, for example, may not be undertaken or supported with program funds.

(e) Deduction of contributions to political activities from employees' paychecks. Experience has shown that the deduction of contributions for political purposes by grantees from employees' paychecks has often resulted in complaints that such contributions were not voluntary. Even when no overt coercion exists, employees may be under implicit pressure to allow such deductions if the activity in question is one with strong support from their superiors. Therefore, beginning with the effective date of this subpart, no contribution may be collected for any political activity through any deduction from the paycheck of an employee of any grantee, if that employee is paid with CSA funds. This prohibition does not extend to other methods of soliciting and collecting such contributions, provided they are lawful and not contrary to other provisions of this or any other CSA regulation.

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[1] Restrictions (1) and (2) are imposed on employees of all grantees and delegate agencies except educational and research organizations by section 603(a) of the Community Services Act and Chapter 15, Title 5 of the U.S. Code. They are extended to volunteers and board members by CSA to implement the provisions of section 603(b) of the Community Services Act. Restrictions (3) through (6) implement sections 603(b) and 613 of the Community Services Act.

[2] The restrictions on voter registration and transportation activity are imposed pursuant to section 603(b) of the Community Services Act of 1974.

(f) Candidates' meetings. Candidates' meetings, even if all rival candidates for one or more public offices appear, shall not be sponsored or conducted with program funds or facilities. This restriction on use of program funds does not, however, limit the rights of employees, volunteers, or board members to participate in candidates' meetings, subject to the restrictions in paragraph (c) of this section.

NOTE: For an interpretation document affecting paragraph (e), see 42 FR 57693, Nov. 4, 1977.

§ 1069.8–6 Additional restrictions on political activities of employees of CAAs, public grantees, and public delegate agencies.

(a) This section of this subpart contains additional restrictions applied by section 603(a) of the Community Services Act and by Chapter 15, Title 5 of the United States Code. These restrictions apply to *all* CAAs (whether public or private), public grantees, and public delegate agencies, *except* educational or research organizations. They do *not* apply to private grantees other than CAAs or to private delegate agencies.

(b) These additional restrictions apply, subject to the provisions of paragraph (b)(1) of this section, only to *employees* of the agencies covered by this section. Volunteers and board members are *not* subject to these restrictions.

(1) *Employees to whom this section applies*—(i) *Employees of all federally assisted programs covered.* This section applies to all employees of CAAs and other public agencies who perform duties in connection with federally-assisted programs administered by that agency, even if the program is assisted by a Federal agency *other than CSA.* Employees performing duties in connection with programs financed by non-Federal sources are not covered.

(ii) *Principal employment rule.* This section applies to an employee who holds more than one job provided that his principal job—that is, the job on which he spends the majority of his work time and from which he derives the majority of his earned income—is covered by this section.

(iii) *Employees on leave still covered.* This section applies to employees even though they are on leave, with or without pay. The prohibitions are lifted only when the employment is terminated. However, if any employee is on terminal leave, he is not subject to the restrictions during the period for which he has received a lump-sum leave payment.

(iv) *Only certain trainees covered.* Trainees and enrollees shall be deemed employees for purposes of this section only if they are engaged in on-the-job training for a position as an employee of the CAA, public grantee, or public delegate agency.

(2) *Prohibited political activity.*[1] An employee covered by this section is not permitted to be a candidate for public elective office, except that nonpartisan candidacies and candidacy for political party office are permitted, as set out in § 1069.8–6(b)(3)(ii) of this subpart. Thus no employee covered by this section may run in a primary or general election for public office, except as provided below in § 1069.8–6(b)(3)(ii) of this subpart. An employee planning to be a candidate for partisan public elective office should

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[1] Further information on activities prohibited by Chapter 15, Title 5 of U.S. Code may be obtained from the Office of General Counsel, United States Civil Service Commission, Washington, DC 20415.

resign his or her position prior to announcement of his or her candidacy or commencement of substantial activities intended directly to promote said candidacy, whichever occurs first.

(3) *Permitted activities while off-duty.* (i) Most political activities are permitted to covered employees on their own time; however, they should be alert to avoid activities which may violate 5(c) of this subpart.

(ii) Permitted activities *while off-duty* include, but are not limited to:

(A) Being a nonpartisan candidate, as defined in 5 U.S.C. 1503:

> Being a candidate in any election if none of the candidates to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(B) Being a candidate for political party office even where such office is attained through election in a partisan primary election.

(C) Soliciting or handling political contributions from other than employees covered by this section or other persons associated with, or receiving substantial benefits from CSA.

(D) Soliciting the sale of or selling political fund-raising tickets to other than employees covered by this section or other persons associated with or receiving substantial benefits from CSA.

(E) Organizing and/or serving as an officer of a political club or organization.

(F) Organizing and/or conducting a political meeting or rally.

(G) Managing or taking part in the management or conduct of a political campaign.

(H) Engaging in any legal activity at the polls in any election.

(I) Writing, publishing, distributing, or circulating political campaign literature or petitions, including nomination petitions.

[41 FR 15011, Apr. 9, 1976; 41 FR 18081, Apr. 30, 1976]

§ 1069.8-7 Additional precautions.

(a) As explained in section 6 of this subpart employees of all CAAs, other public grantees and public delegate agencies are prohibited from being candidates for public elective office in partisan elections, but are otherwise free to engage in political activities while off-duty. This does not prohibit employees of private grantees other than CAAs and private delegate agencies from running for office or engaging in any other partisan political activities while off-duty. However, all employees should conduct such activities so as to avoid identifying their agencies with political campaigns associated with electing candidates to public or party office. With the recent expansion of the permissible scope of these activities pursuant to the Federal Election Campaign Act Amendments of 1974 (Pub. L. 93-443), it is especially necessary for all employees to act scrupulously so as to maintain the separation between their private political activities and their actions on the job.

(b) Directors and deputy directors of grantees and delegate agencies and neighborhood and outreach workers have the most substantial contacts with the community and are likely to be regarded as spokesmen for their agencies. Hence they must be particularly careful not to involve or identify the CSA-assisted program with the campaign of any individual for public or party office.

(c) All grantee and delegate agencies must inform their employees about these precautions.

§ 1069.8-8 Enforcement.

(a) *Reporting possible violations.* (1) Violations of Title 5, Chapter 15, U.S. Code. When a grantee or delegate agency or individual has reason to believe that an employee has engaged in political activity prohibited by the statutory provisions of Chapter 15, Title 5 of the U.S. Code (§ 1069.8-6(b)(1) (i) and (ii) of this subpart), the agency or individual shall report the matter to the United States Civil Service Commission, Office of the General Counsel, Washington, DC 20415.

(2) Other violations. Information concerning possible violations of other provisions of this subpart shall be reported either in writing or orally by the grantee or delegate agency or any individual to the CSA Office of Inspection in Washington, DC

(3) If the grantee, delegate agency or individual is uncertain as to whether an activity violates the statutory provisions of Chapter 15, Title 5 of the U.S. Code administered by the Civil Service Commission, the information may be submitted to the CSA Office of the General Counsel in Washington, D.C. The CSA General Counsel will refer information concerning possible violations of Chapter 15, Title 5 of the U.S. Code to the Civil Service Commission for consideration where appropriate.

(4) A grantee or delegate agency may in addition make such preliminary inquiry as may be necessary to verify the facts concerning the reported violation and initiate appropriate action to prevent a continuation or recurrence of the prohibited activity.

(b) *CSA action to prevent continuationer repetition of violations.* (1) When CSA receives information concerning possible violation of the restrictions of this subpart it may—

(i) Conduct an investigation to ascertain the facts and, in appropriate cases, undertake informal discussions with the grantee or delegate agency concerned in order to agree upon means for preventing continuation or repetition of the violation, and

(ii) Refer the matter, with/or without investigation, to the Office of the General Counsel of the Civil Service Commission for consideration.

(2) If CSA concludes, after discussions with the local agency concerned, that appropriate action will not be taken by the grantee, CSA may then issue an order to the grantee directing it to take such action as may be necessary to prevent continuation or repetition of the violation.

(3) If the grantee fails to comply with such an order issued by CSA, CSA may, on an emergency basis, summarily suspend assistance in whole or in part, or it may proceed to suspend or terminate assistance pursuant to Part 1067 of Chapter X, Title 45 of the Code of Federal Regulations, (OEO Instruction 6730-2). A grantee whose financial assistance has been summarily suspended under this provision may at any time request informal discussions with CSA officials and present evidence that no further violation is occurring and may also request CSA to hold a full hearing in accordance with the regulations cited above.

(c) *Enforcement action by the Civil Service Commission.* (1) CSA may refer any specific information of apparent violation of the non-Hatch Act restrictions set forth in this subpart to the General Counsel of the Civil Service Commission for investigation and determination. The General Counsel of the Commission may conduct an investigation and inform CSA and the grantee or delegate agency involved of his findings of fact and the corrective action recommended. If the corrective action recommended is directed against an employee of a grantee or delegate agency, the General Counsel of the Commission shall also inform the employee involved of his findings of fact and recommendation. In formulating his findings of fact and the corrective action recommended, the General Counsel of the Commission may request information from and solicit the views of CSA.

(2) Within fifteen days after receipt of the report of the General Counsel of the Commission, the grantee or delegate agency shall either comply fully with the Commission's recommendations or request the Commission to hold a hearing. If the Commission recommends the dismissal or suspension of an employee, he may also request a hearing. The Commission shall give notice of the time and place of the hearing at which the agency or the affected employee is entitled to appear in person, or by or with counsel. The agency or employee and the counsel for the Commission are responsible for securing the attendance of their respective witnesses. There is no power of subpoena in these cases.

(3) The hearing shall be before an examiner designated by the Commission. Testimony shall be under oath or affirmation and the parties may introduce affidavits and other documentary evidence. Unless the parties agree to a summary of the testimony, the hearing will be reported stenographically. The hearing examiner shall report his findings of facts and recommendations of sanctions to the Director of CSA.

(4) The Director of CSA may reject, modify or affirm the recommenda-

tions of the hearing examiner. If he accepts any part of the recommendations, he shall issue an order to the agency directing it to comply with those sanctions he has accepted. If the local agency refuses to comply within five days after receiving this order, the Director may suspend or terminate assistance to the agency pursuant to Part 1067 of Chapter X, Title 45 of the Code of Federal Regulations. However, if the Director of CSA affirms a recommendation of the hearing examiner that assistance to a local agency be suspended or terminated, CSA shall not hold an additional hearing. In such instances, the hearing held before the examiner designated by the Civil Service Commission shall be regarded as satisfying the requirements of Part 1067 of Chapter X, Title 45 of the Code of Federal Regulations.

(5) In any hearing held by CSA pursuant to Part 1067, an issue of fact previously determined by a hearing examiner designated by the Commission shall be deemed conclusively determined and shall not be relitigated.

(6) The sanctions which the General Counsel of the Commission or a Commission-designated hearing examiner may recommend include, but are not limited to, the following:

(i) Full or partial termination or suspension of assistance.

(ii) Changes in the administration of the grantee's or delegate agency's program or activities.

(iii) An order to an agency directing the dismissal, suspension, transfer or reprimand of an employee or other person engaged in carrying out the agency's program.

APPENDIX A

EXCERPTS FROM THE COMMUNITY SERVICES ACT OF 1974

Sec. 213.(a): "Each community action agency shall observe, and shall (as appropriate) require or encourage other agencies participating in a community action program to observe, standards of organization, management and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the title and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias. . . ." "Each community action agency shall establish or adopt rules to carry out this section. . . ."

Sec. 213(b): "The Director shall prescribe rules or regulations to supplement subsection (a), which shall be binding on all agencies carrying on community action program activities with financial assistance under this title."

Sec. 602(n): "In addition to the authority conferred upon him by other sections of this Act, the Director is authorized, in carrying out his functions under this Act, to establish such policies, standards, criteria, and procedures, prescribe such rules and regulations . . . and generally perform such functions and take such steps as he may deem to be necessary or appropriate to carry out the provisions of this Act."

Sec. 603(a): "For purposes of Chapter 15 of Title 5 of the United States Code any overall community action agency which assumes responsibility for planning, developing, and coordinating community-wide antipoverty programs and receives assistance under this Act shall be deemed to be a State or local agency; and for purposes of clauses (1) and (2) of section 1502(a) of such title any agency receiving assistance under this Act shall be deemed to be a State or local agency."

Sec. 603(b): "Programs assisted under this Act shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity. The Director, after consultation with the Civil Service Commission, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis."

APPENDIX B—CHECKLIST OF APPLICABILITY OF RESTRICTIONS

[An X designates the restrictions which *do* apply]

Type of agency and persons	Applicable section of 45 CFR 1069.8				
	5(c)	5(d)	5(e)	5(f)	6
CAA's, other public grantees and public delegate agencies:					
Programs and program funds	X	X	X	X	
Employees	[1] X	X	X	....	[2] X
Volunteers	X	X	....	....	
Board members	X	....	....	....	
Private grantees and private delegate agencies other than CAA's:					
Programs and program funds	X	X	X	X	
Employees	[1] X	X	X	....	
Volunteers	X	X	....	....	
Board members	X	....	....	....	

[1] Except that employees of educational and research organizations are not covered by subsections 5(c)(1) and 5(c)(2).

[2] Except that employees of educational and research organizations are not covered and that trainees are covered only if they are in on-the-job training for positions with the agency.

Subpart 1069.9—Policy and Procedures on $18,000 Per Year Limitation (CSA Instruction 6903-1a)

AUTHORITY: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

SOURCE: 43 FR 57890, Dec. 11, 1978, unless otherwise noted.

§ 1069.9-1 Applicability.

This subpart is applicable to all employees working on a community action program funded under Title II, Sections 221 and 222(a) of the Economic Opportunity Act of 1964, as amended, if the assistance is administered by the Community Services Administration.

§ 1069.9-2 Reference.

Section 244(2) of the Economic Opportunity Act, as amended; "The Director (of CSA) shall issue necessary rules or regulations to insure that no employee engaged in carrying out community action program activities receiving financial assistance under this title is compensated from funds so provided at a rate in excess of $18,000 per annum, and that any amount paid to such an employee at a rate in excess of $18,000 per annum shall not be considered in determining whether the non-Federal contributions requirements of Section 225(c) have been complied with; the Director may, however, provide in those rules or regulations for exceptions covering cases where, because of the need for specialized or professional skills or prevailing local salary levels, application of the foregoing restrictions would greatly impair program effectiveness or otherwise be inconsistent with the purposes sought to be achieved."

§ 1069.9-3 Definitions.

(a) *Employee.* A person considered an employee for the purpose of withholding Federal income tax. For example, experts and consultants performing services on an intermittent or occasional basis will usually not be employees and will usually not be covered by the restriction. Volunteer service is the valuation of volunteered services, which the volunteer receives no compensation.

(b) *Project funds.* Funds received from CSA as part of the Federal share of a grant or contributed locally as part of the approved non-Federal share of an CSA grant.

§ 1069.9-4 Policy.

(a) The 1978 amendments to the Economic Opportunity Act authorized an increase in the maximum salary allowable for payment to employees carrying out activities under Title II to $18,000. Anytime this limitation is to be exceeded, regardless of the cause, e.g. step increases, promotions, etc. approval by CSA is requested. Also, any succeeding increases or promotions for position again must receive CSA approval. However, the $18,000 limitation does not include the value of fringe benefits allowable under CSA policies.

(b) Note that the legislative permission to grant exceptions is a means to avoid situations in which the salary limitation would impair program effectiveness. It does not give any general permission for liberalization of salaries at or near $18,000.

§ 1069.9–5 Clarification of effect of $18,000 limitation.

(a) *Local payment of salaries over $18,000 per year.* The legislation does not forbid local agencies from paying community action employees at a rate over $18,000 per year in those cases where CSA does not approve such a salary. The Act provides only that the excess compensation is granted. Local agencies may pay more than the $18,000 rate, using their own sources for the excess compensation.

(b) *Impact on new employees.* In cases where CSA has approved a salary above $18,000 for a position under the provisions of this directive and there is a change in the incumbent of that position, it will not normally be necessary to request a new waiver if the duties and responsibilities of the position remain essentially the same and the approved salary was not based on the comparability data of the community from which the previous incumbent was hired.

(c) *Effect of restriction on part-time CAP employees.* Where an employee spends only part-time working on a community action program, the $18,000 per year restriction will apply pro rata to that portion of the work which is charged to the community action program.

§ 1069.9–6 Criteria and procedures for CSA exceptions to $18,000 limitation.

(a) In general, procedures for applying for an exception to the $18,000 limitation will be part of the regular grant approval process. Although it is expected that most requests for an exception to the $18,000 limitation will be made at the time of the grant application, a grantee may initiate a request for an exception at any time during the program year. No matter when the request is made, however, CSA administering offices will specifically inform the grantee in writing when such a request is approved.

(b) At a minimum, the notification will contain the specific identification of the position (and the applicant and his/her last community in which he/she was employed if approval is based on salary rates that prevail in the community from which hired), the salary requested, the salary approved and the effective time period covered.

(1) Types of Positions Eligible for Exception. The grantee may apply for an exception to the $18,000 limitation for any specific position which calls for a person of specialized skills or other qualifications requiring a rate of pay in excess of $18,000 per year, e.g. physicians, dentists, lawyers. Top administrators of large and complex programs, e.g. executive director of a large metropolitan area CAA or of a multi-county rural CAA involving a complex coordinating role and administration of a large poverty program with many components may also be excepted.

(2) Criteria for CSA Approval of Salaries in Excess of $18,000 per Year Rate. In all cases the grantee must provide documentation and CSA approval will be based upon, the following considerations:

(i) Programmatic Need for Salary Requested. Consider both the need for that position and the need for a person with qualifications calling for the salary requested.

(ii) Also consider the anticipated reduction in program effectiveness if a person of lower qualifications were hired and any anticipated difficulties in recruiting persons if a lower rate were paid.

(3) Wage Comparability. Generally, the salary paid must be comparable to the prevailing salary level for comparable positions in the community of the CSA-funded agency or must be comparable to the prevailing salary level for similar positions in the community in which the person hired held in his/her last preceding employment. (See OEO Instruction 6900-02).

(c) The administering offices may request additional justification and/or documentation from the grantee or delegate agency if the submission is inadequate as a basis for judgment.

Subpart 1069.26—Social Security Coverage for Employees Under CAP Grants (CSA Instruction 6906–01)

AUTHORITY: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

SOURCE: 44 FR 56583, Oct. 1, 1979, unless otherwise noted.

§ 1069.26–1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1069.26–2 Effective date.

September 13, 1966 (CSA Instruction 6906–01).

§ 1069.26–3 Purpose.

CSA recognizes the important benefits which accrue to employees from social security coverage, and strongly recommends that those grantee and delegate agencies which are not already obligated by law to report wages for social security purposes seek to obtain coverage for their employees whenever feasible. It is CSA policy to include in its grants the funds necessary to pay the employer's share of social security contributions. These contributions are a legitimate budgetary expense under fringe benefits in the personnel category of the budget. This subpart is designed to familiarize grantee and delegate agencies with the possibilities of coverage under the Social Security Act and the requirements of reporting their employees' wages.

§ 1069.26–4 Identification of employer for social security purposes.

It is important to determine who is the employer for purposes of the social security laws. The employer, for social security purposes, is the agency which has the authority to direct how, when and where the employee's services will be performed, and which has the right to hire and fire. Most frequently the employer is the organization which directly administers the component program, that is, the grantee in a non-delegated program or the delegate agency in a delegated program. If you have difficulty in determining who is the employer for social security purposes, you should contact your local Social Security Administration or Internal Revenue Service office.

§ 1069.26–5 Where the employer is a private nonprofit organization.

(a) Every private nonprofit agency is required by CSA to furnish evidence that it has obtained, or is applying for, an Internal Revenue Service income tax-exemption ruling. Grantees and delegate agencies that qualify will be granted this exemption, in most cases, as religious, educational, or charitable organizations under Section 501(c)(3) of the Internal Revenue Code. These agencies are also exempt for FICA tax (social security) unless they elect to provide social security coverage for their employees. An agency which wishes to provide coverage for its employees must waive its FICA tax exemption by filing a completed Form SS–15 with the District Director of Internal Revenue. Persons employed during the calendar quarter in which the waiver form is filed may choose whether they want social security coverage. All employees who choose to be covered indicate their choice by signing the Form SS–15(a) which is filed with the Form SS–15. Employees hired after the calendar quarter in which the waiver certificate is filed are mandatorily covered, and the agency must deduct the employees' share of the contribution from their wages.

(b) If the employer does not qualify as a 501(c) Organization (religious, educational, charitable), social security coverage is mandatory for its employees.

(c) Both private non-profit organizations whose employees are mandatorily covered and those 501(c)(3) organizations which waive their exemption from FICA tax must report the wages of all employees who earn $50 or more for a calendar quarter to the appropriate District Director of Internal Revenue. Information concerning the withholding and payment of social security contributions can be obtained from the Internal Revenue Service.

§ 1069.26–6 State and local government agency as employer.

Whether an employee of a State or local governmental (i.e., public) agency is covered by social security depends upon the terms of the voluntary agreement between the State and Federal Government. Coverage may already have been provided for employees of the entity under the State's agreement, or if not, it may be possible to provide coverage. Each such agency should contact the appropriate State Social Security Administrator for information concerning coverage of its employees, and the withholding and payment of social security contributions. Where employees of such public agencies are covered, their wages are reported on forms provided by, and filed with, the State Social Security Administrator.

§ 1069.26–7 Indian Tribal Council or similar tribal organization as employer.

Although such organizations are considered public agencies under Title II of the Economic Opportunity Act, they normally are classified as private agencies under the Social Security Act and the Internal Revenue Code. Employment in all such organizations is mandatorily covered by the Social Security Act and the organization is subject to FICA tax. Wages of all employees must be reported to the appropriate District Director of Internal Revenue.

Subpart 1069.28—Prohibition Against Acceptance of Gifts and Gratuities (CSA Instruction 6909–1)

Authority: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

Source: 44 FR 56584, Oct. 1, 1979, unless otherwise noted.

§ 1069.28–1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1069.28–2 Effective date.

§ 1069.28–3 Definition.

Members of employees immediate family shall include any of the following persons:

Husband
Father
Mother
Sister
Father-in-law
Mother-in-law
Sister-in-law
Brother
Son
Daughter
Wife
Son-in-law
Daughter-in-law
Brother-in-law

§ 1069.28–4 Policy.

(a) Employees of all grantees, delegate agencies, members of employee's immediate family, and members of any board or policy-making body of such agencies, are prohibited from accepting gifts, money and gratuities:

(1) From persons receiving benefits or services under any program financially assisted by the Community Services Administration.

(2) From any person or agency performing services under contract.

(3) From persons who are otherwise in a position to benefit from the actions of any employee or board member.

(b) Grantees and delegate agencies shall include the above prohibition in their published personnel policies or publish written instructions to supplement their personnel policies, and establish effective procedures to enforce the prohibition.

PART 1070—GRANTEE PUBLIC AFFAIRS

Subpart 1070.1—Public Access to Grantee Information (CSA Instruction 7041–1)

Sec.

1070.1-1 Applicability of this subpart.
1070.1-2 Definitions.
1070.1-3 Requirements for inspection and examination.
1070.1-4 Classes of public information.
1070.1-5 Additional information.
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Subpart 1070.2—Grantee Public Meetings and Hearings (CSA Instruction 7042–1)

1070.2-1 Applicability of this subpart.
1070.2-2 Definitions.

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1070.2-3 Public meetings after grant of assistance.
1070.2-4 Time, place, and notice of public meetings.
1070.2-5 Conduct of the public meetings.

Subpart 1070.4—Grantee Involvement in the News Media (CSA Instruction 7044-1a)

1070.4-1 Applicability.
1070.4-2 Policy.
1070.4-3 Procedures.

Subpart 1070.1—Public Access to Grantee Information (CSA Instruction 7041-1)

AUTHORITY: Secs. 213, 602, 81 Stat. 695, 78 Stat. 530; 42 U.S.C. 2796, 2942.

SOURCE: 34 FR 7375, May 7, 1969, unless otherwise noted.

§ 1070.1-1 Applicability of this subpart.

This subpart applies to all public agencies and private organizations which receive financial assistance under Title I-B, I-D, II, or III-B of the Economic Opportunity Act, as amended, if the assistance is administered by OEO.

§ 1070.1-2 Definitions.

As used in this subpart—

(a) "Agency" when used without qualification means a public agency or private organization which has received assistance under Title I-B, Title I-D, Title II, or Title III-B of the Economic Opportunity Act.

(b) "Applicant agency" means an agency which has filed an application with OEO for direct assistance under Title I-B, Title I-D, Title II, or Title III-P of the Economic Opportunity Act.

(c) "Community Action Agency" means an agency that has been recognized as such under section 210 of the Economic Opportunity Act by OEO.

(d) "Completed audit" means the auditor's final report as transmitted to the audited agency, along with any comments made by the audited agency in response to the audit report. The audit becomes "completed" 30 days after receipt by the audited agency.

(e) "Delegate agency" means an agency to which the development, conduct, or administration of all or part of a project assisted under Title I-B, Title I-D, Title II, or Title III-B of the Economic Opportunity Act has been delegated by the direct recipient of the assistance.

(f) "Economic Opportunity Act" means the Economic Opportunity Act of 1964 together with amendments. Citation to any section includes the corresponding section of the Act prior to the 1967 Amendments.

(g) "OEO," unless otherwise indicated in this subpart, refers to the appropriate Regional or Headquarters Office with responsibility for approving the particular grant or contract.

§ 1070.1-3 Requirements for inspection and examination.

(a) Every Community Action Agency and every applicant agency which currently seeks recognition by OEO as a Community Action Agency shall make available to any person for inspection and examination all of those documents described in § 1070.1-4, but this shall not apply if the Community Action Agency or applicant agency is a State, a political subdivision of a State, or a combination of such political subdivisions.

(b) Any State, political subdivision of a State, or combination of such political subdivisions that is or seeks to become a Community Action Agency, any delegate agency, and all other agencies (other than Community Action Agencies) that are recipients of direct assistance under Title I-B, Title I-D, Title II, or Title III-B of the Economic Opportunity Act shall make available to any person for inspection and examination those documents described in paragraphs (a) to (i) of § 1070.1-4 and the records described in paragraphs (j) through (n) which pertain to activities assisted by OEO.

§ 1070.1-4 Classes of public information.

The following are the books and records and other classes of public information which an agency shall make available for public inspection and examination to the extent required by § 1070.1-3:

(a) Any application of the agency submitted to and currently pending with OEO for assistance under the Economic Opportunity Act;

(b) Copies of all those written statements and affidavits which are filed with the agency pursuant to the requirements of § 1070.2–5;

(c) Any proposal received by the agency and currently pending before it for inclusion of a certain project in an application to OEO;

(d) Any proposal approved by the agency for inclusion in an application for assistance under the Economic Opportunity Act but not yet submitted to OEO; however, this requirement shall not apply to proposals for research or demonstration projects in situations where the agency believes disclosure will jeopardize its proprietary interests in the proposal;

(e) All books of account maintained by the agency with respect to its development, conduct, or administration or any program or project assisted by OEO;

(f) All contracts made in connection with the administration of any program or project assisted by OEO, including contracts for conduct and administration of program accounts, contracts for consultant services, and contracts for the purchase of goods and services, as well as all purchase of goods and services, as well as all purchase orders, invoices, and other documents evidencing the expenditure of project funds;

(g) With respect to any assistance which has been received by the agency from OEO under Title I-B, Title I-D, Title II, or Title III-B of the Economic Opportunity Act, the application for such assistance, the statement of grant or similar document indicating approval of the application and extension of assistance by OEO, and all documents accompanying such a statement of grant or similar document, or authorizing changes in the grant as originally approved;

(h) All report forms submitted by the agency to OEO with respect to the development, conduct, or administration of any program assisted by OEO, with the exception that this paragraph shall not apply to reports of data about identifiable persons who are clients of legal services programs or who are beneficiaries of any other programs;

(i) Articles of incorporation and bylaws of any private agency or any official acts governing the creation and operation of a public agency, and any similar documents which provide the basic authority of the agency or the basic rules of its governance;

(j) Lists of names of all current and past employees of the agency together with their job descriptions and their rate of compensation, but Neighborhood Youth Corps enrollees are not considered employees for purposes of this subsection nor are other persons receiving payments in the form of stipends or otherwise who are intended as the principal and direct beneficiaries of a program.

(k) Statements or records of all actions taken (as distinguished from reports of discussion) at all meetings of the principal representative board, the Board of Directors, Executive Committee, and other boards which have the power to make decisions on behalf of the agency or to advise the agency on policy;

(l) Lists of the names and addresses of all current and past members of the agency, and of its boards, councils, and committees that have or have had policy making or policy advisory responsibility for the program;

(m) Current and past budgets of the agency, and reports of completed audits of the accounts of the agency required by section 243 of the Economic Opportunity Act and made by a certified public accountant, a duly licensed public accountant, or, in the case of a public agency, the appropriate public financial officer.

(n) Current and past city, State, and Federal tax returns filed by the agency.

§ 1070.1–5 Additional information.

Any agency which is assisted by OEO, or which is seeking such assistance, should make documents relating to such assistance available to the maximum extent possible. Except in cases where disclosure of such documents would involve an invasion of privacy, would impose an undue administrative burden on the agency, or would interfere with the internal decision making processes of the agency, the agency should permit examination and inspection of all such documents requested by any person. The enumeration of books and records and other classes of public information to be made available under § 1070.1-4 should not be considered exhaustive.

§ 1070.1-6 Conditions of public inspection and examination.

(a) In any case in which books and records or other documents are required by this subpart to be made available for public inspection and examination, they shall be made available at the principal office of the disclosing agency at which business related to assistance received under the Economic Opportunity Act is transacted.

(b) They shall be available during regular business hours on each [illegible]ular workday (Monday through Fr[illegible] of each week, official local holidays excepted). In the case of documents being used for official purposes at the time requested for inspection and examination is made, the documents shall be made available no later than five business days after the receipt of each request. The requirements for public inspection may be satisfied by making available for such inspection either the original or a copy which is both legible and capable of being legibly photocopied. Facsimile copies should also be furnished to any person upon request. If the agency uses its own reproduction equipment, it may charge a fee of 10 cents or less for each page. If other equipment is used, the fee shall not exceed the actual cost of the service to the agency.

(c) In any case in which an agency concludes that notwithstanding the provisions of this subpart a document should not be made public, the agency shall immediately request the approval of OEO in writing, giving a description of the document and a full explanation of the justification for the agency's conclusion that the document is not of a public nature. OEO will in such cases make a prompt determination as to whether the document should be made public.

Subpart 1070.2—Grantee Public Meetings and Hearings (CSA Instruction 7042-1)

AUTHORITY: Secs. 213, 602, 81 Stat. 695, 78 Stat. 530; 42 U.S.C. 2796, 2942.

SOURCE: 34 FR 7376, May 7, 1969, unless otherwise noted.

§ 1070.2-1 Applicability of this subpart.

This subpart applies to all agencies and organizations covered by § 1070.1-1.

§ 1070.2-2 Definitions.

As used in this subpart—

(a) The terms "Community Action Agency," "delegate agency," "Economic Opportunity Act," and "OEO" have the same meaning as set forth in § 1070.1-2.

(b) "Community served" means the most expansive geographic area in which the grantee is authorized to conduct programs or provide benefits under the terms of its grant from OEO.

(c) "Community proposed to be served" means a city, county, multicity, or multicounty unit, an Indian Reservation or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed for a community action program.

(d) "Designation" means the selection of a proposed Community Action Agency by a State, a political subdivision (including the Tribal Government of an Indian Reservation) or a combination of political subdivisions in accordance with regulations issued under section 210 of the Economic Opportunity Act.

(e) "Principal Representative Board" in the case of Community Action Agencies refers to that body which is designed to meet the composition requirements of section 211(b) of the Economic Opportunity Act. In the case of all other agencies, "Principal Representative Board" refers to the agency's "governing body" or "advisory board or committee" which meets the requirements of § 1060.1-2 (b)(5) and (c) of this chapter (Subpart—Participation of the Poor in the Planning, Conduct, and Evaluation of Community Action Programs).

§ 1070.2-3 Public meetings after grant of assistance.

(a) This subpart implements the requirement for public meetings in sections 213(a) and 213(b) of the Economic Opportunity Act. This requirement is applicable throughout the period of assistance to any agency which has received financial assistance under section 123, section 151, section 221, section 222(a), or section 312 of the Economic Opportunity Act. In the case of a Community Action Agency which is not a State, a political subdivision of the State, or a combination of subdivisions, this subpart applies to all activities of that agency. For all other Community Action Agencies, delegate agencies, and other agencies financially assisted under these sections, this subpart applies only to matters which pertain to activities assisted under these sections. An agency may satisfy this requirement for public meetings either by holding regular meetings as specified in paragraph (a)(1) of this section or by holding special meetings as specified in paragraph (a)(2) of this section.

(1) The agency may establish a procedure whereby regularly scheduled meetings of the principal representative board will be held not less often than one meeting every 10 weeks for the purpose of discussing past, present, or future policies or programs of the agency; and persons who are not members of the board may attend and will be offered a reasonable opportunity to be heard whether or not on the agenda.

(2) Any such agency shall hold a public meeting in response to a written request for such a meeting by any person or group. The meeting shall be held within 30 days of the receipt of the request by the agency. A request for a meeting shall include a statement of the basic issue or issues which the requesting party particularly wishes considered at the meeting. A request may be denied if, by a vote of at least three-fourths of the members of the principal representative board of the agency who are present at a lawful meeting, the board determines either that the request raises only frivolous issues or that the proposed meeting would merely be repetitive of previous public meetings. Notice of such board decision must be sent within 30 days to OEO.

(b) The public hearing requirements of this section are in addition to the requirements of CA Memo 80, Part C(4) for public meetings prior to designation of a community action agency and Part I of OEO Instruction 6710-1 for open board meetings are part of the grant preview process.

[34 FR 7375, May 7, 1969, as amended at 34 FR 8919, June 4, 1969]

§ 1070.2-4 Time, place, and notice of public meetings.

All public meetings required under paragraphs (a) and (b) of § 1070.2-3 shall be held at a time and place convenient to the public. Public notice of each meeting shall state the time and place at which the meeting shall be held and the agenda for the meeting, and shall be given not less than 10 days before the day of the meeting. Notice of a meeting shall be given by:

(a) Publishing a formal notice as a legal notice in at least one newspaper generally circulated within the community served or proposed to be served by the agency; and

(b) Posting a formal notice in a prominent place at the principal office of the agency, at the county courthouse, at the city hall of each major city within the area, at each other place where official notices are regularly posted, and at such appropriate other places within the community served or proposed to be served as may be designated by the representatives of the poor on the principal representative board; and

(c) Forwarding a formal notice of the meeting:

(1) To every newspaper with a daily or weekly circulation of more than 5,000 copies within the community served by the agency, or if there is no newspaper having circulation of that size then to every newspaper with a daily or weekly circulation of more than 2,500 copies in such community,

(2) To every radio and television station which regularly broadcasts local news or announcements of meetings in the community served, or proposed to be served,

(3) To any community newspaper or journal primarily serving a neighborhood or area in which the agency runs or is preparing to run a program under the Economic Opportunity Act,

(4) To each person who has submitted a written request for copies of such notices,

(5) To the State Economic Opportunity Office for the State in which the agency is located,

(6) To OEO,

(7) To every member of the principal representative board of the agency, and

(8) To the chief elected officials in the community served or proposed to be served and other appropriate public officials.

However, agencies which serve an area larger than a single county shall consult OEO concerning the place or places where meetings shall be held and what notice shall be required. Procedures approved by OEO shall, to the extent specified by OEO, satisfy the requirements of this section.

§ 1070.2-5 Conduct of the public meetings.

(a) Each meeting shall be held before the principal representative board. It shall be held at the time and place set forth in the notice of meeting. In the event the meeting cannot be completed on that date, it may be continued from day-to-day or adjourned to a later day without notice other than the announcement of the place, day, and time by the presiding officer, and the posting of that information on the door of the originally publicized meeting place for the benefit of late arrivals.

(b) Each meeting shall be open to all members of the public. Every person expressing a desire to speak shall be heard, although the presiding officer may establish reasonable limits on the length of the statement of any one person. Should the presiding officer determine that the opportunity to be heard is being utilized for purposes of delay, he may exclude statements essentially repetitious of statements already heard.

(c) Although meetings may be conducted in an informal manner, minutes shall be kept which fairly and accurately reflect the business of the meeting, and the basic sides of any disputed questions or issues which arise. Written statements and affidavits shall be accepted for the record of the meeting. Such statement and affidavits should preferably be submitted in triplicate, but shall be accepted even if offered in a single copy or in duplicate. Such statements shall be made public at the office of the agency.

Subpart 1070.4—Grantee Involvement in the News Media (CSA Instruction 7044-1a)

AUTHORITY: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

SOURCE: 41 FR 6256, Feb. 12, 1976, unless otherwise noted.

§ 1070.4-1 Applicability.

This subpart applies to all programs financially assisted under Titles II and VII of the Community Services Act if such assistance is administered by the Community Services Administration.

§ 1070.4-2 Policy.

(a) *Publishing a Newsletter or House Organ.* CSA does not provide funds for the publication of newspapers. However, grantees are encouraged to publish newsletters or house organs which assist local anti-poverty efforts. These publications are generally financed under the administrative budget of the local agency.

(1) CSA makes the following distinctions between newspapers and newsletters:

(i) A newspaper attempts to meet a population's general information need, while the grantee newsletter has a specific information objective and a limited audience. A newsletter attempts to bridge the communication gap often existing between a grantee and the people it serves by raising the level of information about the nature, goals, and resources of local anti-poverty efforts.

(ii) Newspapers are sold for profit, and they attempt to solicit commercial advertising. A grantee newsletter is not sold, nor is commercial advertising solicited or accepted for it.

(2) Newsletters are under local control as are all other grantee activities. Consequently, they reflect the policies and opinions of the local grantee. Newsletters are also subject to the same laws and regulations, such as those restricting partisan political activity, which govern CSA funded programs.

(3) CAA principal representative boards and boards of CDC's and limited purpose agencies have the ultimate responsibility of insuring that the content of all grantee publications coming under their jurisdiction reflect the policies and opinions of the local program and are in accord with CSA policy. To accomplish this, the board may elect to delegate the review function to the Executive Director. In all cases, publications must be reviewed prior to printing to assure compliance with this policy and the sanction of the board. Arrangements should be made by the grantee with each of its delegate agencies, neighborhood councils, and any other group it funds who may be publishing a newsletter or house organ to expedite this review process in a manner consistent with timely publication and program responsiveness. Project funds will not be spent for newsletters unless a review procedure has been established in accordance with this Instruction.

(b) *Use of Advertising Time and Space as Non-Federal Share.* CSA does not credit as an in-kind contribution for a grantee's non-Federal share requirement any news coverage, editorial comment, advertising or public service time or space in any communications media such as radio, television, magazines, wire services and news services. This policy does not, however, prohibit a grantee from using Federal or non-Federal funds for publishing or advertising program activities when the grantee can show that the expense is the best way of achieving a legitimate program purpose. This is an allowable expenditure although not an allowable in-kind contribution for a grantee's non-Federal share requirement. This policy also does not prohibit a grantee from accepting public service time or notices in the mass media, as long as such activities are not treated as in-kind, non-Federal share contributions.

§ 1070.4-3 Procedures.

In cases where the practices of a grantee conflict with this policy statement, such as with newsletters which may be soliciting advertising, CSA will help the grantee determine a reasonable timetable and plan through which such operations may be phased-out without halting publication. CSA will help grantees determine a reasonable cost for their newsletter and will assist them in working the cost of the newsletter into their administrative budget.

PART 1076—ECONOMIC DEVELOPMENT PROGRAMS

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1076.10-4 Selection of CDC Board Members.
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1076.50-5 Eligible activities.
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1076.50-7 Terms of loans/guarantees.
1076.50-8 Interest on loans; allowable costs.
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1076.50-11 Liquidation; default.
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Subpart 1076.60—Community Development Credit Union Loan Program

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CROSS REFERENCE: For policy governing the Community Development Credit Union Program, see 12 CFR Part 705 issued jointly by the Community Services Administration and the National Credit Union Administration.

Subpart 1076.10—Composition and Selection of CDC Boards of Directors (CSA Instruction 6402-2)

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 40 FR 44818, Sept. 30, 1975, unless otherwise noted.

§ 1076.10-1 Applicability.

This subpart applies to all community development corporations (CDCs) financially assisted by CSA under sections 712 and 747 of the Community Services Act of 1974, subject to the provisions of § 1076.10-5.

§ 1076.10-2 Policy.

(a) It is the clear intent of Title VII that CDCs be self-help organizations controlled by and responsible to low-income residents. It is also the intent of Title VII that CDCs mobilize other community resources and carry out their self-help efforts in partnership with the business and financial community. The governing policy for CDC boards is therefore that they be composed primarily of low-income residents or their representatives, chosen through a direct or indirect election process to assure their legitimacy as spokesman for the target area residents, with additional representation from local businesses and financial institutions to strengthen the board's technical skills and involvement with the larger community.

(b) Section 1076.10-3 provides the specific requirements for the composition of CDC boards. Section 1076.10-3 outlines the representation requirements for the two basic categories of board members. § 1076.10-4 provides the specific requirements for selecting board members, including a discussion of the two different methods—direct and indirect—for electing representatives of target area residents.

§ 1076.10-3 Composition of CDC Boards.

(a) *Size of Board.* CDCs are free to determine the size of their boards of directors. In doing so, CDCs must strike a balance between various, sometimes conflicting, considerations. On the one hand, they must be of a sufficient size as to provide adequate representation to both the target area residents and the business community (see paragraph (c) below), to permit the formation of working committees without requiring the same individuals to serve on more than one or two, and to insure that even a minimum quorum is still large enough to represent the community and legitimately reach basic policy and program decisions. On the other hand, the board must be small enough to permit business to be conducted in an efficient and expeditious way. It has been the experience of OED that the ideal size for a CDC board is between 15 and 30 members. Generally, anything larger tends to become unwieldly, while anything smaller overtaxes the capacity of individual members and limits the board's representativeness. Where a CDC chooses to have a board larger than 30 or smaller than 15 members, it shall explain its choice to OED.

(b) *Residency Requirements.* (1) Members of CDC boards of directors should be residents of the special impact area, except in those instances where it is necessary to choose non-residents to insure effective representation of the business and financial community. In almost all rural CDCs (with the possible exception of Indian reservations) where the special impact area is a sizable land mass including middle class and affluent residential areas as well as high levels of low-income population, there will seldom be a need to have non-residents on the board even to represent the business sector. In urban CDCs, where the special impact area is usually a low-income neighborhood of a large city, effective spokesmen for the business and financial community may not reside within the special impact area, even if their businesses or financial institutions are located there. In most urban CDCs it will be necessary to reach out to the larger community to find adequate representation of the business sector.

(2) Nevertheless, as provided in paragraph (c) below, representatives of the special impact area residents must always constitute a controlling interest on the CDC board. Accordingly, even in a CDC where every representative of the business and financial community is a non-resident, a clear majority of the board members will be residents of the area served.

(c) *Representation Requirements.* There are two categories of members on CDC boards of directors: representatives of the low-income community to be served and representatives of the business, financial, and general community.

(1) *Low-Income Community.* (i) In order to comply with the policy requirements that CDCs be responsive to the low-income residents of the special impact area, representatives of the low-income community must have a controlling interest on any CDC board of directors. This means that at a minimum representatives of the low-income community shall hold more than half of the seats on the board of directors. OED experience has indicated that an even larger proportion, generally around two-thirds, is preferable, since a bare majority is often not enough, given the relative inexperience of some community representatives, for representatives of the low-income community to maintain effective control.

(ii) Often, the total size of the board will determine the proportion of community representatives. The smaller the board, the greater the likelihood that community representatives will constitute less than the preferable two-thirds, so that a sufficient number of business sector representatives may be included on the board. On the other hand, on a larger board of, for example, 25 members, there is no reason why community representatives could not constitute at least two-thirds of the board and still allow sufficient seats for effective representation of the business sector.

(iii) Representatives of the low-income community need not themselves be low-income, provided they have been selected in a democratic fashion in accordance with § 1076.10-4. If appropriate selection procedures have been followed, however, it would normally be anticipated that many of the representatives of the low-income community will themselves be low-income. If only a small proportion of the community representatives are themselves low-income the CDC must demonstrate why this is not an indication of inadequate representation of the community to be served.

(2) *Business and Financial Community.* (i) The purpose of this category of board membership is twofold: to bring to the board individuals with specialized skills and experience which are crucial if the board is to be able to effectively make policy on business and community development programs; and to provide effective bridges between the CDC and other private financial and leadership resources in the larger community. While such representatives must be willing to make a personal commitment to the CDC program and its basic objectives, their selection to the board may not be based primarily on their prior interest and involvement in the problems of the low-income community, but rather on

their technical expertise and institutional contacts.

(ii) This category of board members normally includes businesspeople, accountants, officials of banks and other financial institutions, management representatives of local industrial firms, attorneys, and others exhibiting a positive interest in the Special Impact Program and the concept of community controlled economic development. This category might also include individuals who are not technically businesspeople but who hold leadership positions of prominence in the community, including public elected officials or their representatives, and directors or senior officials of public agencies or of related private non-profit agencies (e.g. local housing agencies, community action agencies, employment services, foundations, etc.).

(iii) To the extent the duly selected representatives of the low-income community may possess some of these skills, the effectiveness of the entire board will be improved. However, it is highly unlikely the community representatives will themselves bring to the board the total range and depth of business and leadership expertise needed to carry out an effective CDC program. Representatives of the business and financial community must be selected specifically because of their specialized skills.

§ 1076.10-4 Selection of CDC Board Members.

Because of the different purposes of the two categories of board membership, the selection process for each must necessarily be different.

(a) *Low-Income Community.* (1) Two methods of selecting representatives of the low-income community are generally used by CDCs and are acceptable to OED: direct election by the members (if the CDC is a non-profit corporation) or stockholders (if the CDC is a for-profit corporation) of the CDC; or indirect election by constituent community organizations within the special impact area which themselves use an acceptable democratic selection process. Often a mix of the two methods is used, with some, or most, community representatives chosen by direct election, and others by indirect election. While both methods are acceptable to OED, the direct election method is preferable. Even where it is demonstrated that the indirect election method is justified, it is preferred that a mix of the two methods be used so that at least some representatives are elected directly.

(2) The selection method used will depend primarily on whether or not the CDC has a broad membership base. Where the CDC has a large membership the direct election method is normally used. Where the CDC does not have a large membership the indirect method is often the only alternative. A broad well-informed, and active membership base is an important ingredient in building an effective and responsive CDC. Such a membership base—provided it is truly representative of the low-income residents and not only of one segment or faction—is concrete evidence of the CDC's legitimacy and support in the community to be served. A broad-based membership also helps to define who the program's beneficiaries are. Moreover, it is a way to insure that the CDC does not become an expression of a small group of self-appointed spokesmen, however well intentioned they might be.

(3) On the other hand, there may be circumstances where it would not be feasible to establish a broad-based membership, particularly in a large and diverse community where it would be hard to determine basic eligibility for membership. In such cases, where there are other well-established organizations which are clearly legitimate and effective spokesmen for the low-income residents, and which themselves have broad-based memberships, it may be preferable to have such organizations in turn select representatives to the CDC board. The burden is on the CDC, however, to demonstrate to OED why a direct membership base is not practical or advantageous and why the indirect election method would more effectively meet the community representation objectives of the Special Impact Program.

(4) Where the direct election method is used, the representatives of the low-income community may be

elected by the CDC membership at an annual meeting or at a series of area meetings of members, preceded by some acceptably democratic nomination procedure. The actual procedure should be one that is adapted to the specific CDC. It should be spelled out in the CDC's by-laws. All representatives of the low-income community may be elected at large. However, many CDCs, particularly rural CDCs serving multicounty target areas, prefer to divide their community representative board seats on an area basis (for example, in a six-county program, to apportion two seats to each county), with the members from each area electing their own representatives. In some instances, a combination of these methods is used with some representatives elected on an area basis and some on an at-large basis (or some by indirect election).

(5) Where the indirect election method is used, the CDC must first identify the organizations which will elect representatives to the board, justifying to OED why those organizations are representative of all or portions of the community and why the number of seats allocated to each organization is appropriate. The CDC must then establish procedures to insure that the constituent organizations elect their representatives to the CDC board through democratic means.

(b) *Business and Financial Community.* (1) Normally, the most effective selection procedure is for the community representatives on the CDC board, once themselves elected, to meet and select the remaining members of the board. This provides for a process whereby the representatives of the business sector will not be self-appointed individuals unwelcomed by the community representatives, but properly motivated representatives who come to the board at the invitation of the target area residents to be served.

(2) In choosing representatives of the business and financial community, the other members of the board should seek the advice and counsel of CDC staff, community leaders, and the organizations or institutions to be represented. In doing so, it is essential that no one be unilaterally selected to represent an organization or institution without the blessing of that organization or institution and its willingness to commit the individual's time and services. It is also essential that the community representatives put aside personal preferences and seek to find individuals with the desired skills and institutional contacts, rather than simply choose individuals who share the same backgrounds and experiences of the community representatives themselves.

(3) CDCs should avoid identifying by name in their by-laws the specific community institutions from which they may select representatives for their boards, since often over time community interests may change and different institutions may become preferable sources of board representatives. Where CDC by-laws already specify such institutions by name such by-laws should be periodically reviewed for change to allow for the substitution or addition of other institutions whose participation may be more relevant to the CDC's goals.

§ 1076.10–5 Compliance Procedures and Waivers.

(a) All CDCs funded by OED for the first time in Fiscal Year 1975 or in succeeding fiscal years must be in compliance with this Instruction as of the effective date of their initial OED grant, unless the conditions of their initial grant provide for a planned phase-in period for compliance during the initial grant period. All such CDCs, however, must be in complete compliance within a year of the effective date of their initial OED grant. In no case shall any such CDC be granted a waiver of any provisions of this subpart.

(b) All CDCs funded by OED for the first time in Fiscal Year 1974 or in prior fiscal years must be in compliance with this subpart within one year of the effective date of this subpart, unless granted a waiver of certain provisions of this subpart. Waivers will normally not be granted by OED, and only upon a finding that (1) despite the noncompliance with particular provisions of this subpart the CDC's board composition and selection procedures have been demonstrated in actual practice to have substantially satisfied the intent to Title VII, and (2) the disruption and dislocation that would be caused by changing long-established CDC procedures would outweigh the advantages to be gained by such changes. In no event will OED consider requests for waivers submitted (1) after one year from the effective date of this subpart, or (2) from CDCs now in compliance with this subpart who wish to change their board composition and selection procedures in such a way as to not comply with this subpart.

Subpart 1076.20—Non-Equity Business Programs Funded by CDC's (CSA Instruction 6158-2)

AUTHORITY: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

SOURCE: 44 FR 55012, Sept. 24, 1979, unless otherwise noted.

§ 1076.20-1 Applicability.

This subpart applies to all non-equity business programs financially assisted by community development corporations (CDCs) with CSA funds under Section 712 of the Economic Opportunity Act of 1964, as amended.

§ 1076.20-2 Definitions.

(a) *Business and Commercial Development Program.* Any venture, organized for profit or on a cooperative basis, financed in whole or in part by a CDC out of CSA section 712(a)(1) grant funds under budget cost category 2.5, Investment Capital.

(b) *Non-Equity Business Program.* A business and commercial development program which is not a venture operating on a cooperative basis and in which the CDC has no equity interest.

(c) *Equity Interest.* Current ownership, in whole or in part of a venture. Specifically excluded from the meaning of this term are those forms of debt financing which involve an option or right to purchase or convert to ownership at some future time or upon some future contingency.

§ 1076.20-3 Policy.

(a) Financial assistance for business and commercial development programs under section 712(a)(1) shall be used predominantly for equity investment (either alone or in combination with other forms of financial assistance) and for cooperatives. This priority on equity investment and support for cooperatives derives from two factors: (1) The emphasis in Title VII on programs which will promote community-based ownership opportunities, an objective that can be best attained through either direct CDC investment in special impact area businesses or in development of cooperatives; and (2) the availability from other Federal funding sources of financial assistance for technical assistance, loans, or loan guarantees, whereas Title VII is the only Federal funding authority for equity capital.

(b) In addition, insofar as section 712 funds are used for financial assistance to non-equity business programs, it is OED policy that such financial assistance be generally limited to loan *guarantees,* rather than be in the form of direct loans. This policy derives from three factors: (1) The availability of direct loan funds from non-Title VII funding sources, including commercial lending institutions; (2) the "leveraging" effect of loan guarantees in attracting outside debt capital into the special impact area; and (3) direct loan programs impose a significant administrative burden on the CDC and require substantial staff resources to service the loans once they are approved.

(c) Finally, since the primary thrust of Title VII is *community* economic development for low-income residents, rather than support to *individual entrepreneurs,* non-equity business programs assisted with section 712 funds should also further the Title VII objective of promoting ownership or employment opportunities for low-income special impact area residents.

(d) Accordingly, CDC use of financial assistance under Section 712 for non-equity business programs is subject to three basic policy limitations: (1) Such assistance shall be accorded a lower priority than, and shall not supplant opportunities for equity investments; (2) except in unusual circumstances direct loans may not be made to non-equity business programs from CDC investment capital funds, and only then as approved by OED on a case by case basis; and (3) financial assistance to non-equity business programs, whether in the form of direct loans, loan guarantees, or some other debt captial mechanism, may not be provided from CDC investment capital funds unless such assistance will provide ownership or employment opportunities to low-income residents of the special impact area.

§ 1076.20-4 Procedures, requirements, and limitations.

(a) No CDC administrative funds under section 712 (cost categories other than 2.5) may be used for *financial* assistance, whether direct loans or loan guarantees, to non-equity business programs.

NOTE: This does not preclude the use of administrative funds for *technical* assistance, e.g., by CDC staff, to non-equity business programs.

(b) Except as provided in any venture autonomy agreement approved by OED, or as provided in any revolving loan guarantee funds approved by OED, no CDC investment capital funds (cost category 2.5) may be used for any individual loan or loan guarantee for any non-equity business program without prior written approval by OED.

(c) In requesting OED approval for any non-equity business program, whether it be an individual loan, individual loan guarantee, or revolving loan guarantee fund, the CDC must demonstrate how the program will directly benefit low-income residents of the special impact area, by providing either ownership or employment opportunities, or both. The CDC must also demonstrate, in requesting approval for any loan guarantee, that loans from commercial or other public sources would not be available without such guarantee. The CDC must also demonstrate, in requesting approval for any direct loan, that either loans from commercial or other public sources would not be available even if the CDC were to guarantee such loans, or that control rights necessary to promote the purposes of Title VII would be obtainable only through a direct loan.

(d) No loan guarantee may exceed 50% of the loan(s) to any recipient, thereby providing at a minimum two-for-one leverage. Where the CDC can devise effective relationships with the lending institution and/or SBA, guarantees of less than 50% providing much greater leverage, should be arranged.

Subpart 1076.41—Waiver of Non-Federal Share of Program Costs for Certain Title VII Programs (CSA Instruction 7641-1)

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 44 FR 56586, Oct. 1, 1979, unless otherwise noted.

§ 1076.41-1 Applicability.

This subpart applies to all grantees financially assisted under Title VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1076.41-2 Effective date.

October 16, 1972 (CSA Instruction 7641-1).

§ 1076.41-3 Purpose.

The purpose of this subpart is to set forth the criteria for waiving the requirement of non-Federal share of program costs for programs carried out with financial assistance pursuant to Title VII of the Economic Opportunity Act of 1964, as amended (EOA).

§ 1076.41-4 Background.

(a) Section 714 of the EOA prescribes two types of non-Federal share requirements. The first requirement relates to the cost of the program including costs of administration. Section 714 permits the Director of CSA to issue regulations establishing objective criteria under which more than 90 per cent of the cost of Title VII program may be supported by Federal Assistance. This subpart sets forth those criteria and is limited to the program costs non-Federal share requirements.

(b) The second non-Federal share requirement in section 714 states that where capital investment is required under a contract with a private organization (other than a non-profit organization) the Federal share of such capital investment shall not exceed 90 per cent. That requirement is not affected by this subpart.

§ 1076.41-5 Policy.

(a) *General.* Each recipient of financial assistance under Title VII is ordinarily required to provide from non-Federal sources 10% of the cost of operating its program. However, under certain circumstances this requirement may be waived. A request for waiver shall be submitted by the applicant or recipient's Chairperson of the Board or comparable official to the Associate Director of Economic Development or other officer having authority to make the grant or otherwise furnish the financial assistance in question (hereinafter referred to as the responsible officer) and a determination shall be made by such officer.

(b) *Operating program.* (1) The requirement for a non-Federal share of program costs shall be waived in whole or in part where it is shown to the satisfaction of the responsible officer that:

(i) The applicant for financial assistance or recipient of financial assistance has made a vigorous effort to raise the non-Federal share but has not been and will not be able to do so in whole or in part.

(ii) The per capita income in the community served by the program is less than one-half the per capita income in the U.S. as a whole. (On the basis of the 1970 Census, one-half the per capita income was $1570 and in February 1972, one-half the estimated per capita income in the U.S. as a whole was approximately $1800). For programs operating in Alaska, the figure representing the per capita income for the United States as a whole shall be adjusted upward by 25% and in Hawaii by 15% to allow for the substantially higher cost of living in those States.

(iii) If the per capita income figures submitted in support of the request for waiver are other than direct U.S. Census data, Census data shall be shown. The Officer determining the request for a waiver may request a full description of the procedures used in developing such data.

(c) *Support Programs.* The requirement of non-Federal share program costs shall also be waived in whole or in part for programs funded to conduct evaluations or research or to furnish support services to other Title VII programs or to CSA, the Department of Commerce, the Department of Labor or the Department of Agriculture, provided that the applicant for financial assistance has made a vigorous effort to raise the non-Federal share but has not been and will not be able to do so in whole or in part.

(d) *Procurement Contracts.* No non-Federal share is required for procurement contracts. Accordingly no waiver is needed.

§ 1076.41-6 Valuation of non-Federal share.

Non-Federal contributions may be in cash or in-kind, fairly evaluated, including but not limited to plant, equipment and services. See Part 1050 of this chapter, Subpart F—Cost Sharing and Matching (CSA Instruction 6800-6).

Subpart 1076.50—Rural Development Loan Fund

AUTHORITY: The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, secs. 623 through 624, 42 U.S.C. 9812, and sec. 681, 42 U.S.C. 9910.

SOURCE: 48 FR 57491, Dec. 30, 1983, unless otherwise noted.

§ 1076.50-1 Applicability.

(a) This regulation implements Pub. L. 97-35, sections 623 through 624, 42 U.S.C. 9812, and section 681, 42 U.S.C. 9910. It governs the use of RDLF funds obligated by CSA in FY '80 and '81 and by HHS in FY '84 and subsequent years unless amended or superseded by new regulations. It does not, however, negate legal contractual arrangements that CSA or intermediaries operating relending programs have already entered into with borrowers under the previous regulations.

(b) For example, it does not change the interest rates of loans already made to existing intermediaries, nor does it change the conditions or terms of sub-loans made by intermediaries under the previous regulations. Existing intermediaries however, must abide by the requirements of this rule in the making of all future RDLF sub-loans, such as: determining an applicant's eligibility, whether the proposed activities and priorities are appropriate, and the terms or conditions under which loans may be made. They must also abide by the relevant sections of § 1076.50-8 through § 1076.50-13 in the administration of all sub-loans, past and future, and in accounting to OCS for such administration. Generally, where loan agreements between a recipient and CSA/OCS or other funding documents refer to RDLF regulations, that reference will mean this rule, when it becomes final, rather than the previous regulations.

(c) In the event that any provision of applicability to previous RDLF loan recipients is found to be invalid, that finding shall not affect any other provision of this regulation.

§ 1076.50-2 Definitions.

(a) *Business facility.* A commercial or industrial enterprise operated primarily for the profit of its owners and which is located in a rural area as defined in paragraph (n).

(b) *Community-based organization.* A private non-profit organization that serves a local community and that has a governing body of which at least 50 percent of the members are residents of that community.

(c) *Community development.* Activity aimed at (1) stimulating the creation of commercial and industrial enterprises which result in increased income, ownership and employment opportunities for low-income rural residents; or (2) improving the physical infrastructure of a rural community, such as land development, constructing or improving community facilities, such as water and waste water facilities, etc.

(d) *Community development corporation.* Any non-profit organization responsible to residents of the area it serves which has received financial assistance under Title VII of the Economic Opportunity Act of 1964 or Part 1 of the Community Economic Development Act of 1981 (42 U.S.C. 9801) and any organization more than 50 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subchapter (see 42 U.S.C. 9802).

(e) *Community facility.* A facility designed to aid in the development of private business and industry in rural areas such as land acquisition and site preparation of land for industrial parks, installation of water and waste water facilities necessary for the establishment or expansion of business facilities, access roads to industrial sites, etc.

(f) *Cooperative.* An incorporated or unincorporated association, the majority of whose members are low-income rural residents, whose members have one vote each, and which conducts for the mutual benefit of its members such operations as producing, purchasing, marketing, processing or other activities aimed at improving the income of its members as producers or their purchasing power as consumers.

(g) *Economic development.* Activity aimed at increasing income, ownership or employment opportunities for low-income rural residents.

(h) *Indian Groups.* Public and private agencies including, but not limited to: governing bodies of any Indian tribe, band, nation, or other organized group or community, including Alaska Native villages, a consortium of villages, or regional corporations recognized by the Secretary of the Interior as having special rights and responsibilities, and as eligible for the unique services provided by the United States to Indians because of their status as Indians; any organized group or consortium of such Indian tribes; organized groups of Indians that the State in which they reside has determined are Indian tribes; and Indian organizations in rural non-reservation areas.

(i) *Intermediary.* An organization provided a loan by the Department for the purpose of relending the funds to other eligible subrecipients.

(j) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as published periodically in the FEDERAL REGISTER by the Secretary.

(k) *Ownership.* Possession of income-producing property. Such possession may be in the form of (1) ownership, by an entrepreneur, of the business he/she operates (e.g., a sole proprietorship) or ownership by a group of enterpreneurs, (e.g., a partnership); (2) ownership, by an investor, of shares of stock issued by a corporation (with the investor's voting power determined by the number of shares he owns); (3) ownership, by an investor, of shares in a cooperative (with control based, not on the number of shares owned, but on the one-member-one-vote principle).

(l) *Private non-profit.* An organization incorporated under not-for-profit laws and not part of or controlled by a public agency.

(m) *Public agency.* Any State or local government, or any branch or agency of such government having the authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(n) *Rural.* That land area of a State or Territory that is not within the boundary of any city or town with a population greater than 25,000 nor within its immediately adjacent urbanized area with a population density of more than 100 persons per square mile, as reflected by the latest Decennial Census.

(o) *Secretary.* The Secretary of Health and Human Services (HHS) or designee.

(p) *Supportive organization of cooperatives.* Any organization whose purpose is to provide economic, technical, or financial assistance to cooperatives.

§ 1076.50-3 Purpose of the RDLF.

(a) The purpose of the Rural Development Loan Fund is to alleviate rural poverty by promoting economic and community development activities which result in expanded opportunities for low-income rural residents to increase their *ownership of, employment in,* or *income from local economic enterprise.*

(b) In accomplishing this purpose, the program seeks to provide loans and loan gurantees at the lowest reasonable cost; to leverage other governmental and private resources in a coordinated attempt to arrest tendencies toward dependency, chronic unemployment, and community deterioration; and to provide adequate technical assistance to assure the success of projects funded under the program.

§ 1076.50-4 Organizations eligible for financial assistance under this program.

The Department will provide financial assistance in the form of loans and/or loan gurantees. Such assistance may be made available directly to eligible applicants or indirectly through intermediary organizations which operate lending programs. Those eligible to receive assistance under this program are:

(a) Low-income rural families or individuals;

(b) Businesses organized for profit which are controlled by low-income residents or which provide for significantly increased income, ownership and/or employment opportunities for low-income rural residents;

(c) Community development corporations;

(d) Private non-profit organizations;

(e) Local cooperatives;

(f) Designated supportive organizations of cooperatives eligible for financial assistance under Subchapter A of Subtitle A of Title VI, Pub. L. 97-35;

(g) Public agencies; and

(h) Indian groups.

§ 1076.50-5 Eligible activities.

(a) Loans or guarantees made under this program may be used *only to finance the establishment, expansion or preservation of business facilities or the undertaking of community development projects in rural areas.* Examples of such activities are:

(1) The establishment or expansion of individual or family-owned businesses in rural areas engaged in various commercial or industrial activities,

such as farming, manufacturing, construction, sales, service, etc.;

(2) The establishment or expansion of cooperatives in rural areas engaged in the production and marketing of farm products, equipment or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various services; etc.

(3) The undertaking of community development projects aimed at improving the economic conditions of a community such as:

(i) The creation of industrial parks;

(ii) The improvement of community facilities, such as water and waste water facilities essential to the establishment or expansion of businesses;

(iii) The establishment of businesses in "enterprise zones", or the improvement of the infrastructure in such zones, etc.

(b) Applicants seeking loans to carry out community development activities, such as those described in (a)(3) above, should consult with appropriate local governments during the planning and application process.

(c) Loans or guarantees may be made for the purchase of land and buildings, machinery and equipment, and for working capital.

(d) Loans or guarantees will not be available for the financing of social services, such as job training, day care, health services, etc.

(e) Loans or guarantees under this program generally will not be made for the refinancing of existing debt. Relenders must obtain prior written approval from the Department for any exceptions to this policy.

(f) Financial assistance shall be only in the form of loans or loan guarantees. No other form of financial assistance is authorized, including provision of collateral, assignment of assets, compensating balances, or co-signing without specific prior written approval from the Department. No assets of the RDLF program may be pledged, assigned, mortgaged, or otherwise encumbered or devoted outside the RDLF program, or for non-RDLF activities of a recipient.

§ 1076.50-6 Priorities.

In making financial assistance available to eligible organizations for business facilities and community development projects, the Department and intermediaries operating relending programs will give priority to projects which:

(a) Provide the greatest number of jobs to and/or significantly increased income and ownership opportunities for low-income rural residents;

(b) Are part of a coordinated community, regional or statewide effort;

(c) Employ a strategy of significantly leveraging or mobilizing other resources;

(d) Demonstrate a positive cost/benefit ratio; and

(e) Are managed by persons who have been successful in operating profit or non-profit enterprises.

§ 1076.50-7 Terms of loans/guarantees.

(a) No loans or guarantees shall be extended for a period exceeding 30 years.

(b) No loans or guarantees will be extended to an applicant unless:

(1) There is reasonable assurance of repayment of the loan based on the fiscal and managerial capabilities of the applicant;

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) terms from private sources or other Federal, State or local programs; and

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(c) In order to satisfy condition number (b)(2) of this section, an applicant must provide documentary evidence that loan funds for the project in question have been denied by at least two other lending sources.

NOTE: Intermediaries need not comply with this requirement when applying for funds for the purpose of relending to sub-recipients. Potential sub-recipients applying to intermediaries must, however, provide such documentation.

(d) Where guarantees, rather than direct loans are made, the Department will guarantee up to 80% of the total amount of a loan to a qualified applicant.

(e) Loans or guarantees made by the Department and/or intermediaries for the purpose of purchasing land and buildings may not be for a period in excess of twenty-five years; those made for the purpose of purchasing machinery and equipment may not be for a period which exceeds the useful life of such items; those made for working capital may not be for a period in excess of five years.

(f) The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note, as agreed to and executed by the Department and borrowers.

(g) Applicants proposing projects that will result in new employment opportunities must assure the Department that a majority of the new employees will be low-income rural residents.

§ 1076.50-8 Interest on loans; allowable costs.

(a) Loans made by the Secretary pursuant to this subpart shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus such additional charges, if any, toward covering other costs of the program as the Secretary of Health and Human Services may determine to be consistent with its purposes, except that for the five years following the date on which the funds are awarded to the borrower, the rate of interest shall be 4 percentage points below the rate established by the Secretary of the Treasury, but not less than 5 percent, whichever is higher.

(b) Interest rates charged by intermediaries to the ultimately intended borrowers shall be those negotiated between the intermediary and the borrower. Intermediaries are encouraged to make loans to such borrowers at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

(c) Interest on loans, premiums earned on guarantees, investment or interest income, service fees and other authorized financing charges received by intermediaries operating relending programs may be used to pay for: (1) The costs of administering the RDLF relending program, (2) the provision of technical assistance to borrowers and (3) the absorption of bad debts associated with RDLF loans. No administrative costs may be claimed without the express written approval of the Department. Proposed budgets to cover the administrative costs of intermediaries must be submitted annually for review and approval by the Department. All proceeds in excess of those needed to cover authorized expenses, as described above, must revolve back into the RDLF and be available for relending to eligible applicants. Any such excess proceeds shall be returned to the Secretary at the end of the loan period or upon repayment of the loan, whichever occurs first.

§ 1076.50-9 Security.

(a) *As a Credit Factor.* The availability of collateral security normally shall be considered as an important factor in making loans or guarantees. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. However, the taking of collateral as security should be considered in each loan making or guarantee transaction. Collateral security should be sufficient to provide the lender reasonable protection from loss in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit.

(b) *Security interests.* Security interests which may be taken by the lender or guarantor include but are not limited to liens on real or personal property, including leasehold interests, assignments of income and accounts receivable, and liens on inventory or proceeds of inventory sales as well as marketable securities and cash collateral accounts.

(c) *Motor vehicles.* Liens ordinarily should be taken on licensed motor vehicles or boats purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(d) *Additional security.* The lender or guarantor may require collateral security or additional security at any time during the term of a loan or guarantee if after review and monitoring an assessment indicates the need for such security.

(e) *Insurance on property secured.* Ordinarily, hazard insurance up to the amount of the loan or the replacement value of the property secured (whichever is less) will be taken naming the lendor as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(f) *Appraisals.* Real property serving as collateral security will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

§ 1076.50-10 Post award requirements.

(a) Borrowers receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work program and any special conditions which the department may impose in awarding a loan.

(b) Unless otherwise specifically agreed to in writing by the Department loan proceeds and any interest thereon not immediately needed or disbursed by the borrower should be deposited in an interest bearing account or time deposit in a bank or other financial institution which can be fully covered by a form of federal deposit insurance.

(c) Any interest or income earned as a result of such deposits shall be used by the borrower only for purposes authorized by the statute, these regulations and officially approved loan agreement.

(d) Intermediaries operating relending programs must maintain separate ledgers and segregated accounts for RDLF funds at all times.

(e) Reporting requirements shall be those delineated in the loan agreement between the Department and a borrower and such subsequent communications as the Department deems appropriate. Intermediaries must document periodically the extent to which increased employment, income and ownership opportunities are provided to low-income rural residents for each loan made by such intermediary.

(f) No intermediary may make a loan to a borrower who has applied for or received a loan from another intermediary unless the Department provides prior written approval for such loan.

§ 1076.50-11 Liquidation; default.

(a) Should the Secretary determine that it is necessary or desirable to take action to protect or further the interests of the Department in connection with any default or breach of conditions under any loan or guarantee made hereunder, the Secretary may:

(1) Declare that the loan is immediately due and payable.

(2) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his/her discretion and upon such terms and conditions as he/she shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Secretary in connection with financial assistance extended hereunder.

(3) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by him/her and take such actions in respect to such loans and guarantees as are necessary or appropriate, consistent with the purpose of the Program and this subpart.

(b) Intermediaries shall report to the Department whenever a loan recipient is more than 90 days in arrears in the repayment of principal or interest.

(c) Failure by a borrower to comply with the provisions of these regulations and/or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.

(d) Failure by an intermediary to comply with the provisions of these regulations or to relend funds in accordance with an approved work plan or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.

(e) Failure of a lender making a guaranteed loan under this program to comply with the provisions of these regulations or guarantee agreement or to disburse and service a loan in accordance with the authorization approving the loan shall release the Department from obligation to purchase its share of the guaranteed loan.

§ 1076.50–12 Conflict of interest.

No intermediary shall relend or guarantee funds to or for the benefit of:

(a) Any person who is a board member, employee, agent or consultant of such intermediary organization without specific prior written approval from the Department, given with full knowledge of the relationship involved, or

(b) Any organization which has on its governing board or as agent, consultant or employee, a person who is also a board member, employee, agent or consultant of the intermediary without specific prior written approval from the Department, given with full knowledge of the relationship involved.

§ 1076.50–13 Application procedures.

(a) Applications for participation in this program will be accepted only pursuant to the terms of these regulations and under the conditions set out in a notice of the availability of funds published in the FEDERAL REGISTER.

(b) Following publication of a notice of availability of funds applicants may obtain forms and instructions regarding application procedures by writing to: Office of Community Services, Rural Development Loan Fund, 1200 19th Street, NW., Washington, DC 20506.

Subpart 1076.60—Community Development Credit Union Loan Program

AUTHORITY: Pub. L. 97-35, Secs. 623, 633, 681, 95 Stat. 494, 498, 42 U.S.C. 9812, 9822, 9910.

SOURCE: 48 FR 53561, Nov. 28, 1983, unless otherwise noted.

§ 1076.60–1 Applicability.

CDCU Revolving Loan Fund monies obligated prior to the effective date of this regulation are governed by 12 CFR 705.1 through 705.12. Funds obligated after the effective date of this regulation are governed by this subpart.

§ 1076.60–2 Purpose and scope.

The purpose of this subpart is to implement the Community Development Credit Union (CDCU) Loan Program under the direct administration of the Office of Community Services (OCS) of the Department of Health and Human Services (HHS). Legislative changes in 1981 resulted in the assumption by HHS of federal administrative responsibility for the CDCU program as authorized by Sections 623, 633, and 681 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

§ 1076.60–3 Definitions.

(a) Community Development Credit Union. For the purpose of this regulation, a Community Development Credit Union (CDCU) is a credit union chartered in accordance with §§ 1076.60–6 and 1076.60–7 of this subpart or an existing credit union which has as a basic purpose the stimulation of economic development activities and community revitalization efforts aimed at benefitting the community it serves, a majority of which must be low-income residents; and which has submitted an application and has been selected for participation in the CDCU program in accordance with the provisions of this regulation.

(b) Loans. For the purposes of this regulation, a loan from OCS to a CDCU may mean a loan to or a nonmembership deposit in a credit union selected and qualified for participation in this program, provided such deposits are permitted by the appropriate state regulatory authority, if the credit union is state-chartered.

§ 1076.60–4 Purpose of program.

The CDCU Loan Program is intended to support community based credit unions in their efforts to:

(a) Stimulate economic development activities in the community they service which result in increased income, ownership, and employment opportunities for low-income residents;

(b) To stimulate community revitalization efforts which result in improved community facilities, housing, transportation, etc., and

(c) To provide needed financial and related services to residents of their communities.

§ 1076.60-5 Eligible applicants.

The CDCU Loan Program is available to existing credit unions and organizations proposing to form a credit union, which meet the requirements of this regulation.

§ 1076.60-6 Program activities.

In order to meet the objectives of the CDCU Loan Program, an applicant selected for participation must provide a variety of financial and related services designed to meet the particular needs of the low income community served. These activities may include, but are not limited to, the following:

(a) Activities aimed at supporting and stimulating economic development and revitalization efforts within the low income community, such as:

(1) Efforts to improve housing conditions and increase home ownership through a variety of mechanisms including self-help and co-op housing development projects, assistance in securing and leveraging mortgages, site development and construction financing;

(2) Efforts to increase employment opportunities by aiding existing businesses and promoting the establishment of new businesses. Applicants are encouraged to use funds available through the CDCU Loan Program to serve as a catalyst to attract and stimulate the investment of capital from other private and public sources to promote economic development activities within the community;

(b) Activities aimed at providing member services such as financial counseling; and

(c) Activities aimed at increasing the membership and the capitalization base such as:

(1) Membership drives;

(2) Campaigns to encourage members to increase their share deposits through systematic savings, utilizing such methods as payroll deductions allotments, etc.

(3) Activities aimed at getting businesses and other organizations serving the community to maintain share deposits or contribute financially in other ways to projects supported by the credit union.

§ 1076.60-7 Application for chartering.

Applications for chartering of new credit unions, to enable participation in the CDCU Loan Program, should be submitted to the appropriate Regional Office of the National Credit Union Administration or a state credit union regulatory agency.

§ 1076.60-8 CDCU field of membership.

(a) A CDCU must serve a total community which is comprised primarily of low income residents. Therefore, the CDCU's field of membership should correspond geographically to the designated program area described in an application, and may include employees who regularly work in the area, businesses located within the area, and the residents of the area.

(b) In particular cases, the community served may include a number of contiguous neighborhoods constituting a target area. A target area is defined as that area designated by the Economic Development Administration or another Federal agency or by a State or local government agency for special assistance to low-income residents such as special impact areas, enterprise zones, etc.

(c) A typical CDCU field of membership may read as follows: Persons who reside or work in that part of Small Town, Any State, designated (e.g. by the Economic Development Adminstration) as the "Special Impact Area" (SIA), bounded on the north by Baker Avenue, on the east by Interstate 85, on the south by First Street, and on the west by Grand Road; employees of this credit union and members of their immediate families; organizations of such persons; individual proprietorships, partnerships, or corporations located within the above SIA and actively engaged in a business practice within the community; and incorporated or unincorporated associations located in the above SIA.

(d) An existing credit union may elect to participate in the CDCU Loan Program upon a majority vote of its board of directors and upon approval of its application for participation. Any credit union field of membership change to conform with a target area as previously described, must be approved by the credit union's board of directors and the appropriate State or Federal regulatory agency in accordance with established procedures.

§ 1076.60-9 Community Development Committee.

Each CDCU shall have a Community Development Committee. The responsibilities of the Community Development Committee fall into two interrelated categories: coordination (liaison) and identification of community needs.

(a) *Coordination.* The Community Development Committee must establish and maintain liaison with all government agencies and others having developmental projects in the community. This liaison will insure a united effort at redeveloping the community with a minimum of duplication.

(b) *Community Needs Plan.* Within 90 days after a credit union has been notified by the Director of OCS of approval of its participation in the CDCU Loan Program, the Community Development Committee of that credit union will prepare and present to the CDCU's board of directors a CDCU Community Needs Plan. This plan will set forth the coordination contacts established and the details of these initiatives. The plan will also contain, in priority sequence, a list of community needs which the credit union proposes to fulfill. The credit union's board of directors will make the decisions on what services can be provided and when.

(Approved by the Office of Management and Budget under control number 0990-0123)

§ 1076.60-10 Loans to CDCU's.

(a) The Director of OCS will make loans to approved CDCUs in accordance with these regulations and the provisions of a notice of availability of funds published in the FEDERAL REGISTER.

(b) *Amount of Loans.* The amount of a loan will be based on financial need and a demonstrated capability of an applicant CDCU to provide financial and related services to the Community as set forth in its application. Existing credit unions selected for participation will be eligible to receive up to $200,000 in loans and new credit unions up to $100,000 in loans. The funds will be released to the participating credit union when the requirements of these regulations and associated notice of availability of funds are met.

(c) *Matching Requirements.* Loan monies made available must be matched by the participating credit union by increasing its member share deposits by one dollar for every two dollars provided by OCS. Participating credit unions must meet this match requirement within one year of the approval of the loan application and must maintain the increase in the total amount of member share deposits for the duration of the loan.

(1) Drawdown of the funds to participating credit unions may be made in a maximum of two payments only. Upon approval of its loan application, and before it meets its match requirement, a participating credit union may receive 50% of the loan committed. The remainder of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan commitment.

(2) Failure of a participating credit union to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Payment of any additional funds initially approved will be limited as appropriate to reflect the revised amount of loan approved, and any funds already advanced to the participating credit

union in excess of the revised amount of loan approved must be returned immediately to OCS. Failure to return such funds to OCS upon demand shall result in the default of the entire loan.

(3) Failure by a credit union to produce at least 25% of its proposed match may result in the requirement by OCS that immediate and full repayment of the loan be made.

(d) *Terms and Repayment.* (1) Assistance made available in this program is in the form of a loan and must be repaid to OCS. All loans will be scheduled for repayment within the shortest time compatible with sound business practices and with the objectives of the program, but in no case will the term exceed five years. The policy of OCS is to revolve these funds as often as practical, in order to gain maximum economic impact and improve the organizational capacity of participating CDCUs.

(2) Semi-annual interest payments (beginning six months after the granting of a loan) and semi-annual principal payments (beginning one year after the granting of a loan) will be required.

(e) *Interest Rates.* Loans made under this rule shall bear interest at a rate of four (4) percentage points below the average market rate for Treasury Notes of comparable duration as of the date the program recipients are selected by OCS for participation. However, in no case shall the rate be less than 5% per annum.

(f) *Default, Collections and Adjustments.* Conditions attached to each loan agreement will require immediate repayment for breach or default in the performance by the participating CDCU of the terms or conditions of the deposit. This will include misrepresentations, default in making interest/principal payments, failure to report, insolvency, failure to maintain adequate match for the duration of the loan period, etc. Immediate repayment will be required of any balance of the funds for improper use.

(g) *Reporting Requirements.* OCS's monitoring procedures and covenants in the loan agreement will require regular financial and business status reports. The provision of such reports should ensure advance notice of a participant's inability to meet payment schedules.

§ 1076.60-11 State chartered credit unions.

State chartered credit union applicants selected for funding by OCS must obtain written concurrence from their respective state regulatory authority to participate in the CDCU loan program.

§ 1076.60-12 Application for participation in the CDCU loan program.

Application for participation in this program will only be accepted in response to a notice of the availability of funds published in the FEDERAL REGISTER.

PART 1080—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

Sec.

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AUTHORITY: 42 U.S.C. 11302 (101 Stat. 485); 42 U.S.C. 11461-11464, 11472 (101 Stat. 532-533).

SOURCE: 54 FR 6372, Feb. 9, 1989, unless otherwise noted.

§ 1080.1 Scope.

This part applies to the Emergency Community Services Homeless Grant Program.

§ 1080.2 Definitions.

(a) "Homeless" or "homeless individual" includes:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(b) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), that is recognized by the Federal Government as eligible for special programs and services provided to Indians because of their status as Indians.

(c) "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

§ 1080.3 Allocation of funds.

From the amounts made available under the Emergency Community Services Homeless Grant Program, the Secretary shall make grants to States that administer programs under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*), after taking into account the amount set aside for Indian tribes in § 1080.7(a) of this chapter. Such grants shall be allocated to the States in accordance with the formula set forth in subsections (a) and (b) of section 674 of such Act (42 U.S.C. 9903 (a) and (b)). No funds shall be allocated under subsection (c) of section 674 of such Act (42 U.S.C. 9903(c)).

§ 1080.4 Eligible use of funds.

Amounts awarded under the Emergency Community Services Homeless Grant Program may be used only for the following purposes:

(a) Expansion of comprehensive services to homeless individuals to provide follow-up and long-term services to help them make the transition out of poverty;

(b) Provision of assistance in obtaining social and maintenance services and income support services for homeless individuals;

(c) Promotion of private sector and other assistance to homeless individuals; and

(d) After October 1, 1988, provision of assistance to any individual who has received a notice of foreclosure, eviction, or termination of utility services, if—

(1) The inability of the individual to make mortgage, rental, or utility payments is due to a sudden reduction in income;

(2) The assistance is necessary to avoid the foreclosure, eviction, or termination of utility services; and

(3) There is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.

§ 1080.5 Application procedures for States.

(a) Each State requesting funds under the Emergency Community Services Homeless Grant Program shall submit to the Office of Community Services an application for funds for each fiscal year, at a time established by the Secretary. Approval must be requested of and received from the Office of Community Services before a State may implement changes to the information requested by paragraph (b) of this section after an application has been approved.

(b) The application may be in any format, but must include a description of the agencies, organizations, and activities that the State intends to support with the amounts received. In addition, the application must include the following assurances, signed by the Governor or his/her designee:

(1) The State will award all of the amounts it receives to:

(i) Community action agencies and other organizations that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act (42 U.S.C. 9904(c)(2)(A));

(ii) Organizations serving migrant and seasonal farmworkers; and

(iii) Any organization to which a State, that applied for and received a waiver from the Secretary under Pub. L. 98-139, made a grant under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*) for fiscal year 1984;

(2) Not less than 90 percent of the amounts received shall be awarded to agencies and organizations meeting the requirements of paragraph (b)(1) of this section that, as of January 1, 1987, were providing services to meet the critically urgent needs of homeless individuals;

(3) No amount received will be used to supplant other programs for homeless individuals administered by the State;

(4) No amount received will be used to defray State administrative costs;

(5) Every effort will be made to award the funds within 60 days of their receipt;

(6) Not more than 25 percent of the amounts received will be used for the purpose described in § 1080.4(d) of these regulations; and

(7) The State will have mechanisms in place to assure coordination among State and local agencies serving the homeless. This will include coordination at the State level with the agency responsible for developing the Comprehensive Homeless Assistance Plan required by section 401 of such Act (42 U.S.C. 11361).

§ 1080.6 Funding of alternative organizations.

(a) If a State does not apply for or submit an approvable application for a grant under the Emergency Community Services Homeless Grant Program, the Secretary shall use the amounts that would have been allocated to that State to make grants to agencies and organizations in the State that meet the requirements of § 1080.5(b) (1) and (2) of this chapter.

(b) The amounts allocated under this section in any fiscal year shall be awarded to eligible agencies and organizations in the same proportion as funds distributed to those agencies and organizations by the State for the previous fiscal year under the Community Services Block Grant Program (42 U.S.C. 9904(c)(2)(A)).

(c) Agencies and organizations eligible to be funded under this section shall submit an application meeting the requirements of §§ 1080.5(a) and 1080.5(b) (3), (4), (6), and (7) of this chapter, at a time specified by the Secretary. If such an agency or organization does not apply for or submit an approvable application under this section, the funds that would have been allocated to them shall be reallocated by the Secretary to the remaining eligible agencies and organizations on a pro rata basis.

§ 1080.7 Funding of Indian tribes.

(a) Not less than 1.5 percent of the funds provided in each fiscal year for the Emergency Community Services Homeless Grant Program shall be allocated by the Secretary directly to Indian tribes that have applied for and received a direct grant award under section 674(c) of the Community Services Block Grant Act (41 U.S.C. 9903(c)) for that fiscal year.

(b) An Indian tribe funded under this section is not required to submit an application for Emergency Community Services Homeless Grant Program funds. A tribe's application for a direct grant award under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)) that is submitted by September 1 for the succeeding fiscal year will be considered as an application for Emergency Community Services Homeless Grant Program funds for that fiscal year. Acceptance of the Community Services Block Grant application by the Office of Community Services will constitute approval of an award of funds under this section.

(c) Funds allocated under this section shall be allotted to an Indian tribe in an amount that bears the same ratio to all the funds allocated under this section as the tribe's poverty population bears to the total poverty population of all tribes funded under this section, except that no tribe shall receive an amount of less than:

(1) $500, for those tribes whose allocation under this section would other-

best copy available

wise be at least $1 but no more than $500; or

(2) $1000, for those tribes whose allocation under this section would otherwise be at least $501 but less than $1000.

(d) For purposes of this section, an Indian tribe's poverty population shall be calculated by multiplying the tribe's overall population by the Indian rural poverty rate for the State in which it is located, using the population and rural poverty rate figures established for the purposes of making direct grants under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)).

§ 1080.8 Reporting requirements.

Each recipient of funds under the Emergency Community Services Homeless Grant Program shall submit an annual report to the Secretary, within 6 months of the end of the period covered by the report, on the expenditure of funds and the implementation of the program for that fiscal year. The report is to state the types of activities funded, any efforts undertaken by the grantee and its subgrantees to coordinate homeless activities funded under this program with other homeless assistance activities in the State and communities, the number of individuals served and any impediments, including statutory and regulatory restrictions to homeless individuals' use of the program and to their obtaining services or benefits under the program.

§ 1080.9 Other requirements.

All recipients of grants under the Emergency Community Services Homeless Grant Program shall be subject to the following regulations applicable to the block grant programs in the Department of Health and Human Services:

(a) 45 CFR Part 96, Subpart B, § 96.12—Grant Payment, concerning the timing and method of disbursing grant awards;

(b) 45 CFR Part 96, Subpart B, § 96.14—Time Period for Obligation and Expenditure of Grant Funds, as amended, concerning the availability of grant funds;

(c) 45 CFR Part 96, Subpart C—Financial Management, as amended, concerning financial management and audit requirements;

(d) 45 CFR Part 96, Subpart E—Enforcement, as amended, concerning enforcement and complaint procedures; and

(e) 45 CFR Part 96, Subpart F—Hearing Procedures, concerning hearing procedures.

CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

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SUBCHAPTER A—GENERAL

PART 1100—STATEMENT FOR THE GUIDANCE OF THE PUBLIC—ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

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AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 99-570, 100 Stat. 3207.

SOURCE: 52 FR 48266, Dec. 21, 1987, unless otherwise noted.

§ 1100.1 Definitions.

(a) "Agency" means the National Endownment for the Arts, the National Endowment for the Humanities, the Institute of Museum Services, or the Federal Council on the Arts and the Humanities.

(b) "Commercial use request" means a request by or on behalf of anyone who seeks information for a use or purpose that furthers the commercial trade or profit interests of the requestor (or the person on whose behalf the request is made.) The agency must determined the use to which a requestor will put the document. Where the agency has reasonable cause to doubt the use to which a requestor will put the records sought or the use is not clear from the request, the agency may seek additional clarification. The requestor fears the burden of demonstrating the use or purpose of the information requested.

(c) "Direct costs" mens those expenditures which an agency actually incurs in searching for and duplication documents to respond to a Freedom of Information Act (FOIA) request. In the case of commercial use requests, the term shall also include expenditures for reviewing documents.

(d) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies may be in the form of paper, microfilm, machine readable documents, or other materials.

(e) "Educational institution" means a preschool, elementary, or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(f) "Non-commercial scientific institution" means an institution that is not operated on a "commercial use" basis as defined in paragraph (b) of this section and which is operated solely for the purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

(g) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be of current interest to the public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a sound basis for expecting publication though that organization, even though not actually employed by it.

(h) "Review" means the process of examining a document located in response to a commercial use request to determine whether any portion is permitted to be withheld. Review includes processing documents for disclosure, including all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(i) "Search" means all the time that is spent looking for material that responds to a request, including page-by-page or line-by-line identification of material in documents. Searches may be done manually or by computer using exisiting programs.

§ 1100.2 Organization.

The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 951 *et seq.* The Foundation is composed of the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum Services, and the Federal Council on the Arts and the Humanities. The Institute of Museum Services became a part of the National Foundation on the Arts and the Humanities pursuant to Pub. L. 97-394 (December 30, 1982) and Pub. L. 98-306 (May 31, 1984). Each Endowment is headed by a Chairman and has an advisory national council composed of 26 presidential appointees. The Institute of Museum Services is headed by a Director and has a National Museum Services Board composed of 15 presidential appointees. The Federal Council on the Arts and the Humanities, comprised of Executive branch officials and appointees of the legislative branch, is authorized to make agreements to indemnify against loss or damage for certain exhibitions and advise on arts and humanities matters.

§ 1100.3 Availability of information to the public.

(a) All inquiries, or requests should be addressed to the appropriate agency. Descriptive brochures of the organization, programs, and function of each agency are available upon request. Inquiries involving work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The telephone number of the National Endowment for the Arts is (202) 682-5400. Requests or inquiries involving the National Endowment for the Humanities should be addressed to the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The telephone number of the National Endowment for the Humanities is (202) 786-0310. Requests or inquiries involving the Institute of Museum Services should be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The telephone number of the Institute of Museum Services is (202) 786-0536.

(b) The head of each agency is responsible for the effective administration of the Freedom of Information Act. The head of each agency pursuant to this responsibility hereby directs that every effort be expended to facilitate service to the public with respect to the obtaining of information and records.

(c) Requests for access to records of the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum Services may be filed by mail with the General Counsel of the National Endowment for the Arts, the Deputy Chairman of the National Endowment for the Humanities, or the Public Affairs Officer of the Institute of Museum Services, as is appropriate. Requests for access to records of the Federal Council on the Arts and the Humanities should be directed to the attention of the National Endowment for the Humanities. All requests should reasonably describe the record or records sought. Requests submitted should be clearly identified as being made pursuant to the Freedom of Information Act.

§ 1100.4 Current index.

Each agency shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication and distribution of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices will be provided upon request at a cost not to exceed the direct cost of the duplication.

§ 1100.5 Agency procedures for handling requests for documents.

(a) Upon receiving a request for documents in accordance with the rules of this part, the General Counsel of the National Endowment for the Arts, Deputy Chairman of the National Endowment for the Humanities, or the Public Affairs Officer of the Institute of Museum Services, as is appropriate, shall determine whether or not the request shall be granted in whole or in part.

(1) The determination shall be made within ten (10) days (excepting Saturdays, Sundays, and legal holidays) after receipt of such request.

(2) The requestor shall be notified of the determination and the reasons that support it. When a request is denied in whole or in part, the requestor, will be notified of his or her rights to appeal the determination to the head of the agency.

(b)(1) Any party whose request for documents has been denied in whole or in part may file an appeal no later than ten (10) working days following receipt of the notification of denial. Appeals must be addressed to the Chairman, National Endowment for the Arts, Washington, DC 20506, the Chairman, National Endowment for the Humanities, Washington, DC 20506, or the Director Institute of Museum Services, Washington, DC 20506, as is appropriate.

(2) The head of the agency or his delegatee shall make a determination with respect to the appeal within twenty (20) days (excepting Saturdays, Sundays, and legal holidays) after the agency has received the appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld either in whole or in part, the head of the agency shall notify the party submitting the appeal of the judicial review provisions of 5 U.S.C. 552(a)(4)(B).

(c) In unusual circumstances, the time limits prescribed to determine a request for documents with respect to initial actions or actions on appeal may be extended by written notice from the General Counsel of the National Endowment for the Arts, the Deputy Chairman of the National Endowment for the Humanities, or the Public Affairs Officer of the Institute of Museum Services as is appropriate. The notice shall describe the reason for the extension and the date on which the determination is expected to be made. No notice shall specify a date that would result in an extension of more than ten (10) days (excepting Saturdays, Sundays, and legal holidays). As is used in this paragraph, "unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject-matter interest in the request.

§ 1100.6 Fees.

(a) *Categories of fees.* Fees will be charged according to the Category of the FOIA request.

(1) *Commercial use requests.* The agency will assess charges to recover the full direct cost of searching for, reviewing, and duplicating the requested document. The agency may recover the cost of searching for and reviewing records even if there is ultimately no disclosure.

(2) *Requests from educational and non-commercial scientific institutions.* The agency will charge for duplication costs. To qualify for this category the requestor must show: (i) That requested records are being sought under the auspices of a qualified institution as defined in § 1100.1 (e) or (f) of this part; (ii) the records are not sought for commercial use; and (iii) the records are being sought in furtherance of scholarly or scientific research of the institution.

(3) *Requests by representatives of the news media.* The agency will charge duplication costs for the requests in this category.

(4) *All other requests.* All other requests shall be charged fees which, recover the full reasonable cost for searching for and duplicating the requested records.

(b) *General fee schedule.* The agency shall use the most efficient and least costly method to comply with requests for documents made under the FOIA. The agency will charge fees to recover all allowable direct costs incurred. The agency may charge fees for searching for and reviewing requested documents even if the documents are determined to be exempt from disclosure or cannot be located. If search charges are likely to exceed $25, the agency shall notify the requestor, unless the requestor has indicated in advance the willingness to pay higher fees. The following fees shall be charged in accordance with paragraph (a) of this section.

(1) *Searches*—(i) *Manual.* The fee charged will be the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search.

(ii) *Computer.* The fee charged will be the actual direct cost of providing the service including the cost of operating the central processing unit for the operating time that is directly attributed to searching for records responsive to a request and the operator/programmer salary apportionable to the search.

(2) *Review.* The fee charged will equal the salary rate(s) (basic pay plus 16.1 percent) of the employee(s) conducting the review.

(3) *Duplication.* Copies of documents photocopied on one-side of a 8½ x 11 inch sheet of paper will be provided at $.10 per page. Photocopies on two sides of a single 8½ x 11 inch sheet of paper will be provided at $.20 per page. For duplication of other materials, the charge will be the direct cost of duplication.

(c) *Restrictions on charging fees.* (1) Except for documents provided in response to a commercial use request, the first 100 pages of duplication or the first two (2) hours of search time shall be provided at no charge. For the purposes of this section, two (2) hours of search time by computer entitles the requestor to two (2) hours of computer operator salary translated into computer search costs. Computer search costs consist of operator salary plus central proceeding unit operating time costs for the duration of the search.

(2) Fees shall not be charged to any requestor, including commercial use requestors, if the cost of collecting a fee would be equal to or greater than the fee itself.

(d) *Waiver or reduction of fees.* (1) Documents shall be furnished without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.

(2) The following factors shall be used to determine whether a fee will be waived or reduced:

(i) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(iv) *The significance of the contribution to public understanding.* Whether disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) *The existence and magnitude of a commercial interest.* Whether the requestor has a commercial interest that would be furthered by the disclosure; and if so

(vi) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(e) *Assessment and collection of fees.* (1) Interest will accrue from the date the bill is mailed if the fee is not paid within thirty (30) days. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717.

(2) If the agency reasonably believes that a requestor(s) is making multiple requests to avoid the assessment of fees, the agency may aggregate such requests and charge accordingly.

(3) The agency may request an advance payment of the fee if

(i) The allowable charges are likely to exceed $250; or

(ii) The requestor has failed previously to pay a fee in a timely fashion.

(4) When the agency requests an advance payment, the time limits prescribed in section (a)(6) of the Freedom of Information Act will begin only after the agency has received full payment.

§ 1100.7 Foundation report of actions.

On or before March 1 of each calendar year, each member agency of the National Foundation on the Arts and the Humanities shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by each member agency of the National Foundation on the Arts and the Humanities not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination;

(b) The number of appeals made by persons under such provision, the result of such appeals, and the reasons for the action upon each appeal that results in the denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each;

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), as amended, including a report of the disciplinary action taken against the officer of employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of every rule made by the Foundation implementing the provisions of the FOIA.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(g) Such other information as indicates efforts to administer the provisions of the FOIA, as amended.

PART 1105—STANDARDS OF CONDUCT OF EMPLOYEES

Sec.

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APPENDIX—RELATED STATUTORY PROVISIONS

AUTHORITY: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supp.; 5 CFR 735.104.

SOURCE: 32 FR 17663, Dec. 12, 1967, unless otherwise noted.

§ 1105.735-1 Purpose.

While confident of the integrity and sense of responsibility of the employees of the National Endowment for the Arts and the National Endowment for the Humanities, it is essential to the Government and to the conduct of the business of the National Endowment for the Arts and the National Endowment for the Humanities that unusually high standards of honesty, integrity, impartiality, and conduct be maintained by employees of the Endowments. In accordance with these concepts, this part sets forth policies and procedures of the Endowments with respect to employee conduct, certain permissible and prohibited outside activities, and possible conflicts-of-interest situations.

§ 1105.735-2 Scope.

The policies and procedures contained in this part apply to all employees of the Endowments, except that specific provision is made in § 1105.735-6-(b) for the filing of Statements of Employment and Financial Interests by special Government employees.

§ 1105.735-3 Definitions.

(a) "Employee" means an officer or employee of the National Endowment for the Arts or the National Endowment for the Humanities or a member of the shared staff of both Endowments. The term "employee" includes both a "regular employee" (as defined in this section) and a "special Government employee" unless expressly qualified.

(b) "Regular employee" means a person holding an appointment in the competitive or excepted service, occupying a position on the staff of either Endowment or the shared staff of both Endowments, without regard to assigned working schedule (that is, including full-time, part-time and intermittent schedules), but excluding all "special Government employees" who have not been designated as "regular employees" by the Chairman of either Endowment for purposes of these regulations.

(c) "Full-time employee" means a "regular employee" with an assigned full-time working schedule.

(d) "Part-time employee" means a "regular employee" with an assigned part-time (less than 40 hours a week) work schedule.

(e) "Intermittent employee" means a "regular employee" with an assigned intermittent working schedule.

(f) "Shared staff" and "joint employees" mean employees performing services for both Endowments on a shared basis.

(g) "Special Government employee" means a "special Government employee" as defined in section 202 of title 18 of the United States Code who is employed by the National Endowment for the Arts or the National Endowment for the Humanities, or by both Endowments jointly.

(h) "Endowment" means either the National Endowment for the Arts or the National Endowment for the Humanities.

(i) "Foundation" means the National Foundation on the Arts and the Humanities.

(j) "Chairman" means the Chairman of the National Endowment for the Arts, or the Chairman of the National Endowment for the Humanities.

(Sec. 10, 79 Stat. 852 as amended 82 Stat. 186, 84 Stat. 443 (20 U.S.C. 959))

[38 FR 3511, Feb. 7, 1973]

§ 1105.735-4 Statutory provisions.

Each employee is responsible for acquainting himself not only with the provisions of this part, but also with applicable portions of each Federal statute relating to his conduct as an employee of the National Endowment for the Arts or the National Endowment for the Humanities and of the U.S. Government. This part will be called to the attention of all employees by the Administrative Officer of the Foundation at least once a year and he will provide a copy of the part to each new employee who joins either the National Endowment for the Arts or the National Endowment for the Humanities or becomes a member of the shared staff. (A list of pertinent statutes is provided in the Appendix to this part.)

§ 1105.735-5 Conflicts-of-Interest Counselor.

(a) *Conflicts-of-Interest Counselor.* The General Counsel of the Foundation is designated the Conflicts-of-Interest Counselor, with responsibility for providing, on request from any employee, counsel regarding conflicts-of-interest regulations and requirements, as well as their applicability in particular situations. Each employee is responsible for seeking the advice of the Conflicts-of-Interest Counselor whenever it appears that he may be, or may become, involved in a possible conflicts-of-interest situation. Any supervisor may refer to the Conflicts-of-Interest Counselor any possible conflicts-of-interest situation involving a subordinate of his whenever he deems such action appropriate. In such cases, the subordinate concerned shall be informed that the matter has been referred for consideration and shall be afforded the opportunity to state his case. The General Counsel of the Foundation is responsible for reviewing conflicts-of-interest matters brought to his attention and for attempting to work with the employees concerned in resolving such situations, and for offering employees an opportunity to explain any conflict or appearance of conflict. Matters which cannot be satisfactorily resolved in this manner will be referred to the

Chairman of the Endowment concerned, or, in the case of a share staff member, to the Chairmen of both Endowments, for decision and appropriate action. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

(b) *Disciplinary and other remedial actions.* When there is a final decision that a conflicts-of-interest situation requires disciplinary or other remedial action, such action shall be taken promptly to end the conflict or appearance of conflict of interest and to carry out any appropriate disciplinary measure. Any action taken, whether disciplinary or otherwise, shall be effected in accordance with applicable laws, Executive orders, Civil Service Commission regulations and the regulations in this part. The action taken may involve, among other things:

(1) Divestment by the employee of his conflicting interest;

(2) Changes in existing duties;

(3) Disqualification for a particular assignment;

(4) Appropriate disciplinary action, up to and including removal.

[32 FR 17663, Dec. 12, 1967, as amended at 33 FR 494, Jan. 13, 1968]

§ 1105.735-6 Statements of employment and financial interests.

(a) *Employees other than special Government employees*—(1) *General requirement.* Statements of employment and financial interests are required of all Federal employees occupying positions at or above Grade 16 or the equivalent, as well as all employees occupying positions which either require the exercise of judgment in making a Government decision, or in taking Government action with regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing private or other non-Federal enterprises;

(iv) Other activities where the decision or action has an economic impact on the interest of a particular non-Federal enterprise; or require the incumbent to report in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law.

(2) *Requirements of the National Endowment for the Arts and the National Endowment for the Humanities.* In order to fulfill the Endowments' obligations under the general Government requirement described in paragraph (a)(1) of this section, it has been determined that a Statement of Employment and Financial Interests must be completed and submitted in accordance with the procedures set forth in this section by employees occupying the following positions:

(i) National Endowment for the Arts:

(*a*) Deputy chairman.

(*b*) All special assistants to the chairman and deputy chairman.

(*c*) All program, division and office directors.

(ii) National Endowment for the Humanities:

(*a*) Deputy chairman.

(*b*) All assistants (including special assistants) to the chairman and deputy chairman.

(*c*) All program and office directors (but not including the Public Information Director).

(*d*) All program officers classified at GS-13 and above.

(iii) Shared staff:

(*a*) All attorneys.

(*b*) Director and Assistant Director of Administration.

(*c*) All auditors classified at GS-13 and above.

(*d*) Financial manager.

(*e*) Administrative services officer.

(*f*) All grants officers.

(3) *Inclusion and exclusion of positions.* (i) Whenever appropriate, the Chairman of an Endowment may amend paragraph (a)(2) of this section to include additional positions in his Endowment that entail submission of such statements or may exclude any positions in his Endowment listed in paragraph (a)(2) of this section the inclusion of which is not required by the general requirement in paragraph (a)(1) of this section. Inclusion or elimination of shared positions will be accomplished by agreement of both Chairmen. Each supervisor is responsi-

ble for bringing to the attention of the appropriate Chairman (through the Deputy Chairman) any position which the supervisor believes should be covered or excluded by this requirement.

(ii) If an employee believes that his position has been improperly included among those for which a Statement of Employment and Financial Interests is required, he may bring this matter, via the Foundation's grievance procedures, to the attention of the appropriate Deputy Chairman or, in the case of shared staff, to the attention of both Deputy Chairmen. In the event that the recommendation is made that the position be included, the employee may appeal to the Chairman of the Endowment concerned, or, in the case of shared staff, to both Chairmen, whose ruling shall be final.

(iii) Although an employee's position may generally be included within the terms of paragraph (a)(1) of this section, such position may be excluded from the reporting requirement when it is determined that:

(*a*) The duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote; or

(*b*) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(4) *Submission of original and supplementary statements.* Each employee covered by this requirement shall complete the statement and submit it within 90 days after the effective date of this part. Each new employee shall complete and submit the statement within 30 days after his entrance on duty or within 90 days after the effective date of this part, whichever date is later. All changes in, or additions to, the information contained in each employee's original statement must be reported in a supplementary statement submitted by the employee as of June 30 each year. If no changes or additions occur a negative report is required. Not withstanding the filing of the annual report required by this subparagraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of title 18, U.S.C., or § 1105.735-7 of this part. The Administrative Office of the Foundation is responsible for informing each new, affected employee of the requirement for him to submit the statement within 30 days after his entrance on duty.

(5) *Interests of employees' relatives.* For purposes of the statement the interests of a spouse, minor child, or any other member of an employee's immediate household who is a blood relation of the employee, are considered to be interests of the employee.

(6) *Information not known by employees.* If information required to be included on the statement of employment and financial interests (supplementary or otherwise, including holdings placed in trust) is not known by the employee but is known to another person, the employee shall request such other person to submit the information on his behalf.

(7) *Information not required.* Employees are not required to submit information relating to their financial interests in any professional society not conducted as a business enterprise as described in the next sentence, charitable, religious, social, fraternal, recreational, public service, civic, political, or similar organization not conducted as a business enterprise. Professional societies, educational institutions, and other nonprofit organizations engaged in research, development, or related activities involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in employees' statements of employment and financial interests.

(8) *Effect of employees' statements on other requirements.* The statements of employment and financial interests and supplementary statements required of employees are in addition to, and are not in substitution for, or in derogation of, any similar requirement imposed by law, regulation, or Executive order. The submission of the

statement or supplementary statement by an employee does not permit him or any other person to participate in any matter in which his or the other person's participation is prohibited by law, regulation, or Executive order.

(9) *Confidentiality of employees' statements.* Each statement of employment and financial interest and each supplementary statement will be held in strictest confidence. The officials designated below to receive such statements will not allow access to, or information to be disclosed from, a statement except to carry out a purpose of this part. Information will not be disclosed from the statement except as the Civil Service Commission or the appropriate Chairman (or Chairmen, in the case of shared staff members) may authorize for good cause shown.

(10) *Review of statements.* (i) Each Deputy Chairman will submit his statement to the appropriate Endowment Chairman.

(ii) Employees of either Endowment shall submit their statements to the Deputy Chairman of that Endowment.

(iii) Joint employees shall submit their statements to both Deputy Chairmen.

(iv) When a statement submitted under paragraph (b)(2) or (3) of this section indicates a conflict between the interests of an employee and the performance of his services for the Government and when the conflict or appearance of conflict cannot be resolved by the Deputy Chairman (or by both Deputy Chairmen in the case of joint employees), he shall report the information concerning the conflict or appearance of conflict to the Chairman through the General Counsel. In the case of joint employees, information concerning the conflict or appearance of conflict shall be reported to both Chairmen. The employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before remedial action is initiated.

(b) *Special Government employees.* (1) Each special Government employee shall submit a statement of employment, and, unless otherwise directed, a statement of financial interests not later than the time of his employment. It is necessary that the special Government employee report all Federal and non-Federal employment, and, when a statement of financial interests is required, those financial interests which relate, either directly, or indirectly, to his Foundation responsibilities or duties.

(2) Each special Government employee must file a supplementary statement of employment and financial interests whenever a significant change occurs, either in his employment or financial interests, in order that his statement may be kept current.

(3) The provisions of paragraphs (a)(5) through (9) of this section apply to special Government employees in the same manner as to other employees.

(Sec. 10, 79 Stat. 852, as amended at 82 Stat. 186, 84 Stat. 443 (20 U.S.C. 959))

[32 FR 17663, Dec. 12, 1967, as amended at 38 FR 3512, Feb. 7, 1973]

§ 1105.735-7 Employee conduct.

(a) *General.* (1) Each Endowment assumes that an employee will conduct himself in a manner that will not discredit or embarrass himself or the Endowment. However, it is pointed out that the violation of the regulations in this part, or any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct on the part of an employee (whether in official duty status or not), is cause for immediate disciplinary action, up to and including removal.

(2) Employees shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of:

(i) Using public office for private gain;

(ii) Giving preferential treatment to any person;

(iii) Impeding Government efficiency or economy;

(iv) Losing complete independence or impartiality;

(v) Making a Government decision outside official channels; or

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Indebtedness.* Employees are expected to meet their just financial obligations and not to take advantage of the fact that their wages are not subject to garnishment for private debts. Failure to meet just financial obligations in a proper and timely manner may result in disciplinary action, up to, and including, removal. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Endowment concerned to determine the validity or amount of the disputed debt.

(c) *Payment of taxes.* Employees are expected to meet their obligations for payment of taxes to Federal, State, and local authorities. Delinquency in payment of Federal, State, and local taxes is cause for disciplinary action, up to, and including, removal. Federal agencies are required to furnish State taxing authorities (including the District of Columbia) with a copy of Form W-2 indicating annual earnings and Federal income tax withheld. Employees are authorized to pay delinquent Federal taxes by payroll deduction: *Provided,* That they make satisfactory arrangements with the Internal Revenue Service to liquidate their tax liabilities in this manner. When such arrangements are not made, District Directors of Internal Revenue have the authority to levy upon the salaries of Federal employees for the full amount of delinquent Federal income tax.

(d) *Financial interests.* Any employee may hold financial interests and engage in financial transactions in the same way as any private citizen, provided that such interests or activities are not prohibited by law, Executive order, or the regulations in this part. In particular, no employee may have any direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his duties and responsibilities as an Endowment employee. No employee shall carry out Endowment duties involving any organization in which he has a direct or indirect financial interest. No employee shall engage directly or indirectly in any financial transaction resulting from, or primarily relying on, information obtained through his employment, or use his employment to coerce, or give the appearance of coercing, a person, to provide financial benefit to himself or another.

(e) *Participation in Endowment grants by former Endowment employees.* In cases not directly coming under the prohibitions of 18 U.S.C. 207 (relating to activities of former Government officials), the following rules shall apply:

(1) In addition to the statutory bars against ever dealing with the U.S. Government in connection with a particular matter in which he participated personally and substantially while an employee, and against dealing with the Government for 1 year after leaving in connection with a matter under his official responsibility while in the Government, a former regular employee of an Endowment may not negotiate with either Endowment, with a view to obtaining support for himself or his organization within 1 year after having left the Endowment, except with the written permission of the Chairman of the Endowment in which he had been employed.

(2) A former regular employee of an Endowment may not be compensated from an Endowment grant directly or indirectly within 1 year of his leaving the Endowment, except with the written permission of the Chairman of the Endowment in which he had been employed.

(3) In the case of joint employees, the written permission referred to in paragraphs (e)(1) and (2) of this section must be given by both Chairmen.

(f) *Gifts, entertainment, and favors.* Employees may not solicit, or accept directly or indirectly from any person, institution, corporation, or group, anything of economic value as a gift, gratuity, favor, entertainment, or loan, which might be reasonably interpreted by others as being of such a nature that it would affect his impartiality. This is especially applicable in those instances where the employee has reason to believe that the person, institution, corporation, or group:

(1) Has, is seeking, or is likely to seek, assistance, support, or funds from an Endowment; or

(2) Conducts operations or activities which are involved with, or are supported by, an Endowment; or

(3) Has interests which might be substantially affected by the employee's performance or nonperformance of duties; or

(4) May be attempting to affect the employee's official actions.

(i) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(ii) Employees are not permitted to accept a gift, or decoration, or other objects from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(iii) Employees may accept promotional material of nominal intrinsic value such as pens, pencils, note pads, calendars, etc. Employees may, on infrequent occasions, accept items of nominal value such as food in the ordinary course of a luncheon or dinner meeting, site visit, or professional conference, when the employee is properly in attendance.

(iv) Neither this paragraph nor paragraph (g) of this section precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

(g) *Outside employment and other activity.* (1) Employees shall not engage in any outside employment or other outside activity not compatible with the full and proper discharge of their duties and responsibilities. Incompatible activities include, but are not limited to, acceptance of anything of monetary value which may result in or create the appearance of a conflict of interest.

(2) Employees shall not engage in outside employment which tends to impair their health or capacity to discharge acceptably their duties and responsibilities.

(3) Regular employees shall not receive anything of value from a private source as compensation for their activities as endowment employees.

(4) Employees shall not engage in teaching, lecturing, or writing which is dependent on official information obtained as a result of Government employment, except when the information has been, or is being made available to the general public, or will be made available to the public on request, or when the Chairman or Deputy Chairman of the Endowment concerned gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. However, employees are encouraged to engage in teaching, lecturing, and writing not prohibited by the regulations in this part, by law, or by Executive order.

(5) Employees shall not receive anything of monetary value for any consulting, lecturing, discussion, writing, or presentation, the subject of which is devoted to the responsibilities, programs, or operations of an Endowment, or which draws on official data or ideas which have not become part of the body of public information.

(6) Employees shall not serve as organizers or directors of conferences, colloquia or similar events supported by grant or contract from an Endowment, but may otherwise participate in such events provided they do not receive any compensation or economic benefit for such participation.

(7) Employees may, however, participate in the affairs of, and accept an

award for meritorious public contribution or achievement given by a charitable, religious, fraternal, educational, recreational, public service, or civic organization.

(h) *Advice or assistance to nonprofit or commercial organizations.* The conditions under which full-time employees may offer assistance or advice to nonprofit or commercial organizations are set forth in this paragraph (h). Although these conditions are stated as general rules, illustrative applications to specific situations are set forth as an aid to interpretation:

(1) *General rules.* While not on official duty, an employee may provide advice or assistance and receive compensation therefor, to either nonprofit or commercial organizations: *Provided,* That such services are unrelated to his Government activities and do not draw upon information deriving from Government sources not publicly available.

(2) *Specific examples.* (i) *Visiting committees.* Employees should not participate in the deliberations of a college or university visiting committee; however, an employee may meet with such groups as an Endowment official where it would be appropriate to attend a similar meeting with any other comparable group requesting his assistance.

(ii) [Reserved]

(iii) *Membership and office holding in professional societies.* An employee may be a member of a professional society, but may not serve as an officer except where the society has not received any support from an Endowment during the preceding three years and the employee has no reason to expect it to seek support during the tenure of his office. If the society later requests support from an Endowment, the employee should resign his office in the society or request permission to remain in such office.

(i) *Misuse of information.* For the purpose of furthering a private interest, employees shall not (except as provided in paragraph (g)(4) of this section) directly or indirectly use, or allow the use of, official information obtained through, or in connection with, his Government employment which has not been made available to the general public.

(j) *Compensation from endowment awarded funds.* No regular employee may receive any compensation, either directly or indirectly, from funds awarded to contractors or grantees by either endowment.

(k) *Use of Federal property.* No employee may use Federal property or facilities of any kind for other than officially approved activities. Every employee has the responsibility to protect and conserve all Federal property which has been entrusted to him.

(l) *Exercise of notary powers.* Employees who are notaries public may not charge or receive any compensation for performing any notarial act during working hours, including the luncheon period.

(m) *Political activity.* Restrictions in this section are applicable to employees on leave, leave without pay, or furlough, as well as to other regular employees. Individuals whose employment is on an intermittent basis (not occupying a substantial portion of their time) are subject to the political activities restrictions only while they are in an active duty status. The period of active duty status for a particular employee includes the entire 24-hour period of any day of actual employment. The "Federal Personnel Manual" may be consulted in the Foundation Administrative Office. If an employee is in doubt about permissible activities, he should contact the Administrative Office for clarification.

(1) Employees may not use their official positions or influence for the purpose of interfering with an election and they may not take an active part in political management or in political campaigns, except as provided in paragraphs (m) (4) and (5) of this section.

(2) No employee may discriminate against another employee because of his political opinions or affiliations.

(3) An employee may not become a candidate for nomination or election to a Federal, State, county, or municipal office on a partisan political ticket. Nor may an employee become a candidate as an independent when opposed by a partisan political candidate, except as provided in paragraph (m)(4) of this section.

(4) Certain political subdivisions in the vicinity of Washington, D.C., as well as other municipalities, designated by the Civil Service Commission, have been granted a limited exception to the rules prohibiting political management or candidacy for local office. In such municipalities, employees may become candidates as independents, even when opposed by partisan political candidates.

(5) In general, employees are encouraged to be candidates for, and to hold, State, county, or municipal offices of a nonpartisan nature when permitted by law. Employees desiring to be candidates for, or to hold, a State or local office or to undertake the political management of a candidacy for such office, must secure the approval of the appropriate Endowment Chairman or, in the case of members of the shared staff, of both Chairmen.

(6) Full-time employees, with the prior consent of the Chairman concerned, or of both Chairmen, in the case of members of the shared staff, may hold positions under a State or local government on a part-time basis only. Intermittent employees may hold full-time or part-time State or local government positions. In both cases, the above restrictions on political activity must be observed.

(n) An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, such as a lottery or the sale or purchase of numbers, etc.

(Sec. 10, 79 Stat. 852, as amended 82 Stat. 186, 84 Stat. 443 (20 U.S.C. 959))

[32 FR 17663, Dec. 12, 1967, as amended at 38 FR 3512, Feb. 7, 1973]

§ 1105.735-8 Presenting grievances to Congress.

Nothing in this part shall be construed as abridging in any way the right of employees, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information, when appropriate, to either House of Congress, or to any committee or member thereof.

APPENDIX—RELATED STATUTORY PROVISIONS

The following is a list of statutes related to the conduct of Government employees and consultants. Upon request, pertinent excerpts of these statutes will be made available by the Administrative Office of the Foundation.

1. House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

2. Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

3. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

4. The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

5. The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

6. The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

7. The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

8. The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a. (c)).

9. The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

10. The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

11. The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

12. The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

13. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

14. The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

15. The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

16. The prohibition against proscribed political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

17. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

[32 FR 17663, Dec. 12, 1967, as amended at 33 FR 494, Jan. 13, 1968]

PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

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APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

AUTHORITY: Sec. 602, 78 Stat. 252 and sec. 10(a)(1), 79 Stat. 852.

SOURCE: 38 FR 17991, July 5, 1973, unless otherwise noted.

§ 1110.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Endowment for the Arts or the National Endowment for the Humanities.

§ 1110.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the National Endowment for the Arts or the National Endowment for the Humanities including the federally assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the part, including assistance pursuant to an application approved prior to such date. It also applies to federal financial assistance extended to any such program prior to the effective date of this part under a contract or grant where the term of the contract or grant continues beyond such date or where the assistance was to provide real or personal property and the recipient or his transferee continues to use or retain ownership or possession of the property (see § 1110.4(a)(1)). This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contract, (b) any assistance to any individual who is the ultimate beneficiary under any such program, or (c) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 1110.3. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 1110.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected, to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training or (ii) to provide work experience which contributes to the education or training of such individuals or (iii) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of the foregoing subparagraph of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of, beneficiaries.

(d) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 1110.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer; and any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program. The responsible Endowment official shall specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipients shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a con-

dition coupled with a right to be reserved by the Endowment to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Endowment official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Chairman of the Endowment concerned may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of the General Services Administration. (41 CFR 101-6.2)

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Endowment official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance, the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Endowment official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal fi-

nancial assistance is sought, or the beneficiaries of or participants in, such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1110.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the activities for which Federal financial assistance is provided by the Endowments. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university, unless it satisfies the responsible Endowment official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(b) In cases of Federal financial assistance to elementary or secondary schools, discrimination by the recipient school district in any of its elementary or secondary schools, or by the recipient private institution, in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustration the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a training grant to a nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution, discrimination is prohibited with respect to any educational activity, any provision of medical or other services and any financial aid to individuals incident to the program.

(d) Where Federal financial assistance is provided to assist in the presentation of artistic and cultural productions to the public, assurances will be required that such productions will not be presented before any audience which has been selected on a discriminatory basis.

(e) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus, a State, in selecting projects to be supported through a State agency, may not base its selections on criteria which have the effect of defeating or substantially impairing accomplishment of the objectives of the Federal financial assistance as respects individuals of a particular race, color, or national origin.

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 1110.6(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

§ 1110.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Endowment official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Endowment official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Endowment official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Endowment official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Endowment official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 1110.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Endowment official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Endowment official a written complaint. A complaint must be filed not later than ninety days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Endowment official.

(c) *Investigations.* The responsible Endowment official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Endowment official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1110.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Endowment official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1110.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1110.4.* If an applicant fails or refuses to furnish an assurance required under § 1110.4 or otherwise fails to comply with that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Endowment concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that such Endowment shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Endowment official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearings, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Chairman of the Endowment concerned, and (4) the expiration of 30 days after the Chairman has filed with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Endowment official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 1110.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1110.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Endowment official that the matter be scheduled for hearing or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right of a hearing under section 602 of the Act and § 1110.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Endowment concerned in Washington, DC, at a time fixed by the responsible Endowment official unless he determines that the convenience of the applicant or recipient or of the Endowment requires that another place be selected. Hearings shall be held before the responsible Endowment official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Endowment shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Endowment and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence entered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this Regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Chairman of the Endowment concerned may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 1110.10.

§ 1110.10 Decisions and notices.

(a) *Decision by person other than the responsible Endowment official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Endowment official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Endowment official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Endowment official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Endowment official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Endowment official.

(b) *Decisions on record or review by the responsible Endowment official.* Whenever a record is certified to the responsible Endowment official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Endowment official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Endowment official shall be given in writing to the applicant or recipient and to the complainant if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1110.9(a) a decision shall be made by the responsible Endowment official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Endowment official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Chairman.* Any final decision of a responsible Endowment official (other than the Chairman) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Chairman, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Endowment official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation. (An elementary or secondary school or school system which is unable to file an assurance of compliance with § 1110.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 1110.4(c), and provides reasonable assurance that it will comply with this court order or plan.)

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Endowment official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Endowment official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Endowment official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Endowment official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1110.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1110.12 Effect on other regulations; forms and instructions.

(a) *Effects on other regulations.* Nothing in this part shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925, 11114, and 11246, and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder or any other regulations or instructions insofar as such order, regulations, or instructions prohibit discrmination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Endowment official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Chairman of an Endowment may from time to time assign to other officials of the Endowment or to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part, including the achievement of effective coordination and maximum uniformity within the Endowment and within the executive branch of the Government in the application of title VI and this part of similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

§ 1110.13 Definitions.

As used in this part:

(a) The term "Foundation" means the National Foundation for the Arts and the Humanities, and includes the National Endowment for the Arts, the National Endowment for the Humanities, and each of their organizational units.

(b) The term "Endowment" means the National Endowment for the Arts or the National Endowment for the Humanities.

(c) The term "Chairman" means the Chairman of the National Endowment for the Arts or the Chairman of the National Endowment for the Humanities.

(d) The term "responsible Endowment official" with respect to any program receiving Federal financial assistance means the Chairman of any Endowment or other Endowment official designated by the Chairman.

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or the donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity involving the provision of services, financial aid, or other benefits to individuals (including education or training, health, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for provision of facilities for furnishing services, financial aid or other benefits to individuals. The service, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipients" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purposes of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Endowment official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Assistance to groups for projects and productions in the arts.
2. Surveys, research and planning in the arts.
3. Assistance to State arts agencies for projects and productions in the arts.
4. Support of research in the humanities.
5. Support of educational programs in the humanities, including the training of students and teachers.
6. Assistance to promote the interchange of information in the humanities.
7. Assistance to foster public understanding and appreciation of the humanities.
8. Support of the publication of scholarly works in the humanities.

PART 1115—PRIVACY ACT REGULATIONS

Sec.
1115.1 Purpose and scope.
1115.2 Definitions.
1115.3 Procedures for notification of existence of records pertaining to individuals.
1115.4 Procedures for requests for access to or disclosure of records pertaining to an individual.
1115.5 Correction of records.
1115.6 Disclosure of records to agencies or persons other than the individual to whom the record pertains.
1115.7 Exemptions.

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 40 FR 49286, Oct. 21, 1975, unless otherwise noted.

§ 1115.1 Purpose and scope.

This part sets forth the National Foundation on the Arts and the Humanities' procedures under the Privacy Act of 1974 as required by 5 U.S.C. 552a(f). Internal guidance for Foundation staff and other regulations implementing the Privacy Act are contained or will be contained in Foundation circulars.

§ 1115.2 Definitions.

For purposes of this part:

(a) "Foundation" means the National Foundation on the Arts and the Humanities.

(b) "Act" means the Privacy Act of 1974 (Pub. L. 93-579).

(c) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) "Maintain", used with reference to a record means to collect, to use, to disseminate, to have control over and responsibility for such record.

(e) "Record" means any item, collection or grouping of information about an individual that is maintained by the Foundation and that is retrievable by his or her name or an identifying particular, such as a number, symbol, fingerprint, or photograph of the individual. Information maintained by the Foundation includes, but is not limited to, education, financial transactions, medical history, employment history and criminal history.

(f) "Routine use" means, with respect to the disclosure of a record, the use of such a record for a purpose which is compatible with the purpose for which it was collected. The routine uses of record systems maintained by the Foundation were established pursuant to notice in the FEDERAL REGISTER.

(g) "System of records" means a group of any records under the control of the Foundation from which information about an individual is retrievable by his or her name or by some identifying particular.

§ 1115.3 Procedures for notification of existence of records pertaining to individuals.

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by the National Foundation on the Arts and the Humanities are listed annually in the FEDERAL REGISTER as required by that Act. Any person who wishes to know whether a system of records contains a record pertaining to him may appear in person at the National Endowment for the Arts, Room 1338, 2401 E Street NW., Washington, DC 20506 or the National Endowment for the Humanities, Room 1000, 806 15th Street NW., Washington, DC 20506, on work days between the hours of 9:00 a.m. and 5:30 p.m. or by writing to the Office of the General Counsel, National Endowment for the Arts or National Endowment for the Humanities, Washington, DC 20506. It is recommended that requests be made in writing, since in many cases it will take several days to ascertain whether a record exists.

(b) Requests for notification of the existence of a record should specifically identify the system of records involved and should state, if the requestor is other than the individual to whom the record pertains, the relationship of the requestor to that individual. (Note that requests will not be honored by the Foundation pursuant to the Privacy Act unless made (1) by the individual to whom the record pertains, (2) by such individual's parent if the individual is a minor, or (3) by such individual's legal guardian if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction).

(c) The Foundation will attempt to respond to a request as to whether a record exists within 10 working days from the time it receives the request or from the time any required identification is established, whichever is later.

§ 1115.4 Procedures for requests for access to or disclosure of records pertaining to an individual.

(a) Any person may request review of records pertaining to him by appearing at the National Endowment for the Arts, Room 1338, 2401 E Street, NW., Washington, DC 20506, or the National Endowment for the Humanities, Room 1000, 806 15th Street, NW., Washington, DC 20506 on work days between the hours of 9:00 a.m. and 5:30 p.m. or by writing to the Office of the General Counsel, National Endowment for the Arts, or National Endowment for the Humanities, Washington, DC 20506. (See paragraphs (b) and (c) of this section for identification requirements.) The request should specifically identify the systems or records involved. The Foundation will strive either to make the record available within 15 working days of the request or to inform the requestor of the need for additional identification or the tendering of fees (as specified in paragraph (d) of this section) within 15 working days.

(b) In the case of persons making requests by appearing at the Foundation, the amount of personal identification required will of necessity vary with the sensitivity of the record involved. Except as indicated below, reasonable identification such as employment identification cards, drivers licenses, and credit cards will normally be accepted as sufficient evidence of identity in the absence of any indications to the contrary. Records in the following systems of records, however, are considered to contain relatively sensitive and/or detailed personal information—

GRANT APPLICATIONS—NEA.
GRANT APPLICATIONS—NEH.
GRANTS TO INDIVIDUALS—NEA.
GRANTS TO INDIVIDUALS AND INSTITUTIONS—NEH.
EQUAL EMPLOYMENT OPPORTUNITY CASE FILE—NFAH NEA/NEH.
EMPLOYEE PAYROLL—NFAH.
PERSONNEL RECORDS—NFAH.

Accordingly, with respect to requests for records in these systems the Foundation reserves the rights to require sufficient identification to identify positively the individual making the request. This might involve independent verification by the Foundation as by phone calls to determine whether an individual has made a request, personal identification by Foundation employees who know the individual, or such other means as are considered appropriate under the circumstances.

(c) A written request will be honored only if it contains the following certification before a duly commissioned notary public of any state or territory (or similar official if the request is made outside the United States):

I,————————(Printed name), do hereby certify that I am the individual about whom the record requested in this letter pertains or that I am within the class of persons authorized to act on his behalf in accordance with 5 U.S.C. 552a(h).

————————
Signature

————————
Date

In the County of——————State of——————. On this ——day of ——

——————————
(Name of individual)

who is personally known to me, did appear before me and sign the above certificate.

——————————
Signature

——————————
Date

(s) My Commission expires ——————

However, where the record requested is contained in any of the systems of records listed in paragraph (b) of this section, the Foundation reserves the right to require additional identification and/or to independently verify to its satisfaction, the identity of the requestor.

(d) Charges for copies of records will be at the rate of $0.10 per photography of each page. Where records are not susceptible to photo-copying, e.g., punch cards, magnetic tapes or oversize materials, the amount charged will be actual cost as determined on a case-by-case basis. Only one copy of each record requested will be supplied. No charge will be made unless the charge as computed above would exceed $3.00 for each request or related series of requests. If a fee in excess of $25.00 would be required, the requestor shall be notified and the fee must be tendered before the records will be copied.

§ 1115.5 Correction of records.

(a) Any individual is entitled to request amendments of records pertaining to him pursuant to 5 U.S.C. 552a(d)(2). Such a request shall be made in writing and addressed to the Office of the General Counsel, National Endowment for the Arts or National Endowment for the Humanities, Washington, DC 20506.

(b) The request should specify the record and systems of records involved, and should specify the exact correction desired and state that the request is made pursuant to the Privacy Act. An edited copy of the record showing the desired correction is desirable. Within 10 working days of the receipt of a properly addressed request (or within 10 working days of the time the General Counsel, National Endowment for the Arts or the General Counsel, National Endowment for the Humanities becomes aware that a particular communication not addressed as prescribed above is a request for correction of a record under the Privacy Act), the General Counsel's office shall acknowledge receipt of the request.

(c) The General Counsel's office upon receipt of such a request shall promptly confer with the office within the Foundation responsible for the record. In the event it is felt that correction is not warranted in whole or in part, the matter shall be brought to the attention of the Deputy Chairman of the Endowment involved. If, after review by the Deputy Chairman of the involved Endowment and discussion with the request or, if deemed helpful, it is determined that correction as requested is not warranted, a letter shall be sent by the Deputy Chairman's office to the requestor denying his request and/or explaining what correction might be made if agreeable to the requestor. This letter shall set forth the reasons for the refusal to honor the request for correction. It shall also inform him of his right to appeal this decision and include a description of the appeals procedure set forth in paragraph (d) of this section.

(d) An appeal may be taken from an adverse determination under paragraph (c) of this section to the Assistant Chairman/Management, National Endowment for the Arts or the Chairman, National Endowment for the Humanities. Such appeal must be made in writing and should clearly indicate that it is an appeal. The basis for the appeal should be included, and it should be mailed to the same address as listed in paragraph (a) of this section. A hearing at the Foundation may be requested. Such hearing will be informal, and shall be before the Assistant Chairman/Management, National Endowment for the Arts, the Chairman, National Endowment for the Humanities, or an appointed designee. If no hearing is requested, the request for appeal should include the basis for the appeal. Where no hearing is requested the Assistant Chairman or Chairman before whom the appeal is taken shall render his decision within thirty working days after receipt of the written appeal at the Foundation, unless the Assistant Chairman or Chairman before whom the appeal is taken, for good cause shown, extends the 30-day period and the appellant is advised in writing of such extension. If a hearing is requested, the Foundation will attempt to contact the appellant within five working days and arrange a suitable time for the hearing. In such cases the decision of the Assistant Chairman or Chairman shall be made within 30 working days after the hearing unless the time is extended and the appellant is advised in writing of such extension.

(e) The final decision of the Assistant Chairman or Chairman in an appeal shall be in writing, and, if adverse to the appellant, set forth the reasons for the refusal to amend the record and advise him of his right to appeal the decision under 5 U.S.C. 552a(g)(1)(A). The individual shall also be notified that he has the right to file with the Foundation a concise statement setting forth the reasons for this disagreement with the refusal of the Foundation to amend his record.

§ 1115.6 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(a) Records required to be made available by the Freedom of Information Act will be released in response to a request formulated in accordance with Foundation regulations found at 45 CFR Part 1100.

(b) Records not required by the Freedom of Information Act to be released may be released, at the discretion of the Foundation, if the written consent of the individual to whom they pertain has been obtained or if such release would be authorized under 5 U.S.C. 552a(b)(1) or (3) through (11).

§ 1115.7 Exemptions.

(a) *Fellowships and grants.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of section 552a(d) any materials which would disclose the identity of references for fellowship or grant applicants contained in any of the Foundation's systems of records.

(b) *Applicants for employment.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(d) any materials which would disclose the identity of references of applicants for employment at the Foundation contained in the system of records entitled "Official Personnel Folders".

SUBCHAPTER B—NATIONAL ENDOWMENT FOR THE ARTS

PART 1150—COLLECTION OF CLAIMS UNDER THE FEDERAL CLAIMS COLLECTION ACT OF 1966

Sec.
1150.1 Scope.
1150.2 Incorporation of joint standards by reference.
1150.3 Subdivision and joining of claims.
1150.4 Referral of claims to the General Counsel.
1150.5 Accounting control.
1150.6 Record retention.
1150.7 Suspension or revocation of eligibility.
1150.8 Standards for collection of claims.
1150.9 Standards for compromise of claims.
1150.10 Standards for suspension or termination of collection action.
1150.11 Referral to GAO or Justice Department.

AUTHORITY: Federal Claims Collection Act of 1966.

SOURCE: 40 FR 51196, Nov. 4, 1975, unless otherwise noted.

§ 1150.1 Scope.

This subpart sets forth the regulations of the National Endowment for the Arts implementing the Federal Claims Collection Act of 1966 (the Act) in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR Parts 101 through 105. The Act (a) requires the head of an agency or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the National Endowment for the Arts; and (b) authorizes the head of an agency or his designee to compromise such claims that do not exceed $20,000 exclusive of interest, or to suspend or terminate collection action where it appears that no person liable on such claims has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting such claim is likely to exceed the amount of recovery.

§ 1150.2 Incorporation of joint standards by reference.

All administrative actions to collect claims arising out of the activities of the National Endowment for the Arts shall be performed in accordance with the applicable standards prescribed in 4 CFR Parts 101 through 105, which are incorporated by reference and supplemented in this subpart.

§ 1150.3 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding $20,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than $20,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed $20,000 exclusive of interest.

§ 1150.4 Referral of claims to the General Counsel.

(a) *Authority of the General Counsel.* The General Counsel shall exercise the powers and perform the duties of the head of the agency to compromise or to suspend or terminate collection action on all claims not exceeding $20,000 exclusive of interest. Claims shall be referred to the General Counsel well within the applicable statute of limitations (28 U.S.C. 2415 and 2416), but in no event more than 2 years after the claims accrued.

(b) *Exclusions.* There shall be no compromise or terminated collection action with respect to any claim: (1) As to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) based in whole or in part on conduct in violation of the anti-trust laws; (3) based on tax statutes; or (4) arising from an exception made by the General Accounting Office in the account of an accountable officer. Such claims shall be promptly referred to the Justice Department or GAO, as appropriate.

§ 1150.5 Accounting control.

The General Counsel shall process all claims collections through the appropriate accounting office and report the collection, compromise, suspension and termination of all claims to the appropriate accounting office for recording.

§ 1150.6 Record retention.

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate office or the General Counsel not less than 1 year after the applicable statute of limitations has run.

§ 1150.7 Suspension or revocation of eligibility.

(a) In the event a contractor, grantee, or other participant in programs sponsored by the Endowment fails to pay his debts to the Endowment within a reasonable time after demand, the fact shall be reported by the Grants, Audit, or other appropriate office to the General Counsel, who shall place such defaulting participant's name on the Endowment's list of debarred, suspended and ineligible contractors and grantees and the participant will be so advised.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the General Counsel who shall so advise the Treasury Department. The Treasury Department will notify the Endowment when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

§ 1150.8 Standards for collection of claims.

(a) *Demand for payment.* Appropriate written demands shall be made upon the debtor which shall include information relating to the consequences of his failure to cooperate.

(b) *Collection by offset.* Collection by offset will be administratively undertaken on claims which are liquidated or certain in amount in every instance where this is feasible.

(c) *Liquidation of collateral.* When the Endowment holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, such procedures should be followed if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

(d) *Collection in installments.* Claims with accrued interest should be collected in full or one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments.

(e) *Interest.* In the event prejudgment interest is not mandated by statute, contract or regulation, the interest shall be assessed at 7 percent. Prejudgment interest may be waived as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal in accordance with the so-called "U.S. Rule" unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest shall not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest.

(f) *Omission not a defense.* Failure to comply with any standard prescribed in 4 CFR Chapter II or in this subpart shall not be available as a defense to any debtor.

§ 1150.9 Standards for compromise of claims.

(a) *Compromise offer.* An offer to compromise may be accepted (1) if there is real doubt concerning the National Endowment for the Arts' ability to prove its case in court for the full amount claimed; (2) if the cost of collecting the claim does not justify the enforced collection of the full amount; (3) if in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel compliance, the National Endowment for the Arts' enforcement policy will be adequately served by acceptance of the sum to be agreed upon, or (4) for other reasons deemed valid by the General Counsel (or his designee) and made a part of the claim record.

(b) *Documentary evidence of compromise.* No compromise of a claim shall be final or binding on the Endowment unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

§ 1150.10 Standards for suspension or termination of collection action.

(a) *Suspension of collection action.* Collection action shall be suspended temporarily on a claim when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, having consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is presently unable to make payment on the National Endowment for the Arts' claim or effect a compromise, but his future prospects justify retention of the claim for periodic review and action and (1) the applicable statute of limitations has been tolled or started anew or (2) future collection can be effected by offset notwithstanding the statute of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

(b) *Termination of collection action.* Collection action may be terminated and the Endowment file closed for the following reasons: (1) No substantial amount can be collected; (2) the debtor cannot be located; (3) the cost will exceed recovery; (4) the claim is legally without merit; or (5) the claim cannot be substantiated by evidence.

§ 1150.11 Referral to GAO or Justice Department.

(a) *Claims referred.* Claims which cannot be collected, compromised, or terminated in accordance with 4 CFR Parts 101 to 105 will be referred to the General Accounting Office in accordance with 31 U.S.C. 71 or to the Department of Justice if the Endowment has been granted an exception from referrals to the General Accounting Office. Also, if there is doubt as to whether collection action should be suspended or terminated on a claim, the claim may be referred to the General Accounting Office for advice. When recovery of a judgment is prerequisite to imposition of administrative sanctions, the claim may be referred to the Justice Department for litigation even though termination of collection activity might otherwise be considered.

(b) *Prompt referral.* Such referrals shall be made as early as possible consistent with aggressive collection action and in any event, well within the statute of limitations for bringing suit against the debtor.

PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

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AUTHORITY: E.O. 11914; sec. 504, Rehabilitation Act of 1973, as amended (Pub. L. 93-112) (29 U.S.C. 794), Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95-602).

SOURCE: 44 FR 22734, Apr. 17, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 1151.1 Purpose.

The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1151.2 Application.

This part applies to each recipient of financial assistance from the National Endowment for the Arts and to each program or activity that receives or benefits from such assistance.

§ 1151.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, (Pub. L. 93-516, 29 U.S.C. 706 *et seq.*) and the Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95-602).

(b) "Section 504" means section 504 of the Act.

(c) "Endowment" means the National Endowment for the Arts.

(d) "Chairman" means the Chairman, National Endowment for the Arts.

(e) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Endowment provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers of leases of such property for less than fair market value or for reduced consideration; and,

(ii) proceeds from a subsequent transfer or lease of such property if the federal share of its fair market value is not returned to the Federal Government.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

§ 1151.4 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or employment in, its programs and activities. Methods of initial and continuing notification may include the posting of notices, publication in print, audio, and visual media, placement of notices in a recipient's publication, and distribution of other written and verbal communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 1151.5 Inconsistent State laws and effect of employment opportunities.

(a) Recipients are not excused from complying with this part as a result of state or local laws which limit the eligibility of handicapped persons to receive services or to practice a profession or occupation.

(b) The presence of limited employment opportunities in a particular profession does not excuse a recipient from complying with the regulation. For example, a music school receiving Endowment financial assistance could not deny admission to a qualified blind applicant because a blind singer may experience more difficulty than a nonhandicapped singer in finding a job.

§§ 1151.6—1151.10 [Reserved]

Subpart B—Standards for Determining Who Are Handicapped Persons

§ 1151.11 Handicapped person.

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of section 504, in connection with employment, this term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or safety of others.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional and mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

§ 1151.12 Qualified handicapped person.

"Qualified handicapped person" means:

(a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§§ 1151.13—1151.15 [Reserved]

Subpart C—Discrimination Prohibited

GENERAL

§ 1151.16 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

(b) These regulations do not prohibit the exclusion of nonhandicapped persons or persons with a specific type of handicap from the benefits of a program limited by Federal statute or executive order to handicapped persons or persons with a different type of handicap.

(c) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Endowment financial assistance because of the absence of appropriate auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(d) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(e) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 1151.17 Specific discriminatory actions prohibited.

(a) A recipient, in providing any aid, benefit, service, or program either directly or through contractual, licensing, or other arrangements, shall not, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, program, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(b) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(c) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(1) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(3) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(d) A recipient may not, in determining the site or location of a facility, make selections:

(1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance; or

(2) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(e) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with federal financial assistance.

§ 1151.18 Illustrative examples.

(a) The following examples will illustrate the application of the foregoing provisions to some of the activities funded by the National Endowment for the Arts.

(1) A museum exhibition catalogue or small press editions supported by the Endowment may be made usable by the blind and the visually impaired through cassette tapes, records, discs, braille, readers and simultaneous publications;

(2) A theatre performance supported by Federal funds may be made available to deaf and hearing impaired persons through the use of a sign language interpreter or by providing scripts in advance of the performance.

(3) A performing arts organization receiving Federal funds for a specific program offered in an inaccessible facility may arrange to provide a reasonable opportunity for that program to be offered to the public at large in an alternative accessible space; e.g., a theatre offering four different plays a season may offer at least one performance of each play in an alternative accessible space.

(4) Recipients of federal funds should make every effort to assure that they do not support organizations or individuals that discriminate;

(5) A handicapped person with experience and expertise equal to qualification standards established by a planning or advisory board may not be excluded from participation on the board on the basis of handicap. This does not mean that every planning or advisory board necessarily must include a handicapped person.

(b) Despite the existence of permissible separate or different programs, e.g., periodic performances in alternative accessible spaces, a physically handicapped person who wishes to be, and can be, escorted to a seat, may not be denied such access to an otherwise inaccessible theatre.

(c) State arts agencies are obligated to develop methods of administering federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by sub-grantees or by the manner in which the funds are distributed.

(d) In the event Endowment funds are utilized to construct, expand, alter, lease or rent a facility, the benefits of the programs and activities provided in or through that facility must be conducted in accordance with these regulations, e.g., a museum receiving a grant to renovate an existing facility must assure that all museum programs and activities conducted in that facility are accessible to handicapped persons.

(e) In carrying out the mandate of section 504 and these implementing regulations recipients should make every effort to administer Endowment assisted programs and activities in a setting in which able-bodied and disabled persons are integrated, e.g., tours made available to the hearing impaired should be open to the public at large and everyone should be permitted to enjoy the benefits of a tactile experience in a museum.

§§ 1151.19—1151.20 [Reserved]

PROGRAM ACCESSIBILITY

§ 1151.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 1151.22 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient may comply with the requirement of paragraph (a) of this section through alteration of existing facilities, the construction of new facilities, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes are necessary to make programs or activities in existing facilities accessible such changes shall be made as soon as possible but in no event later than three years after the effective date of this part.

(d) Transition plan. In the event structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Upon request, the recipient shall make available for public inspection a copy of the transition plan. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

§ 1151.23 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) American National Standards Institute accessibility standards. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI A 117.1—1961 [R 1971]) (Copies obtainable at $2.75 each from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, single copies available free from Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201, or the National Easter Seal Society, 2023 West Ogden Avenue, Chicago, Illinois 60612) shall constitute compliance with paragraph (a) of this section. Departures from the ANSI standards by the use of comparable standards shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

§ 1151.24 Historic Properties. [Reserved]

§§ 1151.25.1151.30 [Reserved]

EMPLOYMENT

§ 1151.31 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipients, and with organizations providing training and apprenticeship programs.

(d) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absences, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 1151.32 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition, or modification of equipment or devices, such as use of telecommunication devices and amplifiers on telephones, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

§ 1151.33 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria are unavailable.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or other factors relevant to adequate performance of the job in question.

§ 1151.34 Preemployment inquiries.

A recipient may not, except as provided below, conduct a preemployment medical examination, make preemployment inquiry as to whether the applicant is a handicapped person, or inquire as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(a) When a recipient is taking remedial action to correct the effects of past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (c) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(b) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(c) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

[44 FR 22734, Apr. 17, 1979; 45 FR 57126, Aug. 27, 1980]

§§ 1151.35—1151.40 [Reserved]

Subpart D—Enforcement

§ 1151.41 Assurances required.

(a) An applicant for federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Chairman, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Endowment.

(b) *Duration of obligation.* (1) In the case of federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(2) In all other cases the assurance will obligate the recipient for the period during which federal financial assistance is extended.

(c) Covenants.

Where property is purchased or improved with federal financial assistance, the recipient shall agree to include in any instrument effecting or recording any transfer of the property a covenant running with the property assuring nondiscrimination for the period during which the real property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

§ 1151.42 Self evaluation.

(a) A recipient shall within six months of the effective date of this part:

(1) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(2) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(3) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(4) Maintain on file, make available for public inspection, and provide to the Endowment upon request, for at least three years following completion of the self-evaluation:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and,

(iii) A description of any modifications made and of any remedial steps taken.

(5) The completed self-evaluation should be signed by a responsible official designated to coordinate the recipient's efforts in connection with this section.

§ 1151.43 Adoption of grievance procedures.

A recipient may adopt an internal grievance procedure in order to provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. A responsible official should be designated to coordinate the recipient's efforts in connection with this section. Such procedures need not be established with respect to complaints from applicants for employment.

§ 1151.44 Endowment enforcement and compliance procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 1110.8 through 1110.11 of Part 1110 of this title.

§§ 1151.45—1151.50 [Reserved]

PART 1152—INTERGOVERNMENTAL REVIEW OF NATIONAL ENDOWMENT FOR THE ARTS PROGRAMS AND ACTIVITIES

Sec.
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1152.2 What definitions apply to these regulations?
1152.3 What programs and activities of the Endowment are subject to these regulations?
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1152.10 How does the Chairman make efforts to accommodate Intergovernmental concerns?
1152.11 What are the Chairman's obligations in interstate situations?
1152.12 How may a state simplify, consolidate, or substitute federally required state plans?
1152.13 May the Chairman waive any provision of these regulations?

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506)

SOURCE: 48 FR 29352, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

§ 1152.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) these regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to improve the internal management of the Endowment, and are not intended to create any right or benefit enforceable at law by a party against the Endowment or its officers.

§ 1152.2 What definitions apply to these regulations?

"Endowment" means the National Endowment for the Arts.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Chairman" means the Chairman of the National Endowment for the Arts or an official or employee of the Endowment acting for the Chairman under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1152.3 What programs and activities of the Endowment are subject to these regulations?

The Chairman publishes in the FEDERAL REGISTER a list of the Endowment's programs and activities that are subject to these regulations.

§ 1152.4 What are the Chairman's general responsibilities under the Order?

(a) The Chairman provides opportunities for consultation by elected officials of those state and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from the Endowment.

(b) If a state adopts a process under the Order to review and coordinate proposed Federal financial assistance the Chairman, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed Federal financial assistance that is communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed Federal financial assistance has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 1152.5 What is the Chairman's obligation with respect to Federal interagency coordination?

The Chairman to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Endowment regarding programs and activities covered under these regulations.

§ 1152.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 1152.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Chairman of the Endowment's programs and activities selected for that process.

(c) A state may notify the Chairman of changes in its selections at any time. For each change, the state shall submit to the Chairman an assurance that the state has consulted with elected local officials regarding the change. The Endowment may establish deadlines by which states are required to inform the Chairman of changes in their program selections.

(d) The Chairman uses a state's process as soon as feasible, depending on individual programs and activities, after the Chairman is notified of its selections.

§ 1152.7 How does the Chairman communicate with state and local officials concerning the Endowment's programs and activities?

(a) [Reserved]

(b) The Chairman provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance if—

(1) The state has not adopted a process under the Order; or

(2) The assistance or development is under program or activity not selected for the state process.

This notice is made by the publication in the FEDERAL REGISTER or other appropriate means which the Endowment in its discretion deems appropriate.

§ 1152.8 How does the Chairman provide states with an opportunity to comment on proposed Federal financial assistance?

(a) Except in unusual circumstance, the Chairman gives state processes or directly affected state, areawide, regional and local officials and entities—

(1) [Reserved]

(2) At least 60 days from the date established by the Chairman to comment on proposed Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Endowment have been delegated.

§ 1152.9 How does the Chairman receive and respond to comments?

(a) The Chairman follows the procedures in § 1152.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 1152.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Endowment.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Endowment. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Endowment by the single point of contact, the Chairman follows the procedure of § 1152.10 of this part.

(e) The Chairman considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Chairman is not required to apply the procedures of § 1152.10 of this part, when such comments are provided by a single point of contact or directly to the Endowment by a commenting party.

§ 1152.10 How does the Chairman make efforts to accommodate Intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Endowment through its single point of contact, the Chairman either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Chairman in his or her discretion deems appropriate. The Chairman may supplement the written explanation by also providing the explanation to the single point of contact by telephone other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section the Chairman informs the single point of contact that:

(1) The Endowment will not implement its decision for ten days after the single point of contact receives the explanation; or

(2) The Chairman has reviewed the decision and determined that, because of unusual circumstances, the ten-day waiting period is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 1152.11 What are the Chairman's obligations in interstate situations?

(a) The Chairman is responsible for:

(1) Identifying proposed Gederal financial assistance that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Endowment's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Endowment's program or activity;

(4) Responding pursuant to § 1152.10 of this part if the Chairman receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Endowment have been delegated.

(b) The Chairman uses the procedures in § 1152.10 if a state process provides a state process recommendation to the Endowment through a single point of contact.

§ 1152.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Chairman.

(c) The Chairman reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if it meets Federal requirements.

§ 1152.13 May the Chairman waive any provision of these regulations?

In an emergency, the Chairman may waive any provision of these regulations.

PART 1153—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ENDOWMENT FOR THE ARTS

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22895 and 22896, June 23, 1986, unless otherwise noted.

§ 1153.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1153.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1153.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Qualified handicapped person" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1153.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 1153.104—1153.109 [Reserved]

§ 1153.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 1153.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1153.112—1153.129 [Reserved]

§§ 1153.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the op-

portunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1153.131—1153.139 [Reserved]

§ 1153.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1153.141—1153.148 [Reserved]

§ 1153.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1153.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1153.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative

burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1153.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1153.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 1153.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will

be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1153.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1153.152—1153.159 [Reserved]

§ 1153.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1153.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 1153.161—1153.169 [Reserved]

§ 1153.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office for Civil Rights, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Office of General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1153.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22895 and 22896, June 23, 1986, as amended at 51 FR 22895, June 23, 1986]

§§ 1153.171—1153.999 [Reserved]

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions
Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions
Appendix C to Part 1154—Certification Regarding Drug-Free Workplace Requirements

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 20 U.S.C. 959(a)(1).

Source: 53 FR 19201 and 19204, May 26, 1988, unless otherwise noted.

Editorial Notes:

(1) For nomenclature changes to Part 1154, see 53 FR 19201, May 26, 1988.

(2) For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474, September 6, 1988.

Subpart A—General

§ 1154.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 1154.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1154.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or,* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) [Reserved]

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *Arts Endowment.* National Endowment for the Arts.

[53 FR 19201 and 19204, May 26, 1988]

§ 1154.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 1154.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1154.110(a). Sections 1154.325, "Scope of debarment," and 1154.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 1154.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1154.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 1154.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1154.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 1154.205 Ineligible persons.

Persons who are ineligible, as defined in § 1154.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 1154.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1154.315 are excluded in accordance with the terms of their settlements. Arts Endowment shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 1154.215 Exception provision.

Arts Endowment may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 1154.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1154.505(a).

§ 1154.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1154.215.

§ 1154.225 Failure to adhere to restrictions.

Except as permitted under § 1154.215 or § 1154.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1154.300 General.

The debarring official may debar a person for any of the causes in § 1154.305, using procedures established in §§ 1154.310 through 1154.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1154.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1154.300 through 1154.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1154.215 or § 1154.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1154.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 1154.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

§ 1154.310 Procedures.

Arts Endowment shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1154.311 through 1154.314.

§ 1154.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 1154.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1154.305 for proposing debarment;

(d) Of the provisions of § 1154.311 through § 1154.314, and any other Arts Endowment procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 1154.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1154.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1154.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1154.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, Arts Endowment may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 1154.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* 1154.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1154.311 through 1154.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

§ 1154.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1154.311 through 1154.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct

shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 1154.400 General.

(a) The suspending official may suspend a person for any of the causes in § 1154.405 using procedures established in §§ 1154.410 through 1154.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1154.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1154.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 1154.400 through 1154.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1154.305(a); or

(2) That a cause for debarment under § 1154.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1154.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* Arts Endowment shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1154.411 through § 1154.413.

§ 1154.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1154.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 1154.411 through 1154.413 and any other Arts

Endowment procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1154.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1154.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1154.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1154.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 1154.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 1154.325), except that the procedures of §§ 1154.410 through 1154.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Arts Endowment and Participants

§ 1154.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 1154.505 Arts Endowment responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which Arts Endowment has granted exceptions under § 1154.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1154.500(b) and of the exceptions granted under § 1154.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Arts Endowment officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Arts Endowment officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1154.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to Arts Endowment if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 54 FR 4964, Jan. 31, 1989, unless otherwise noted.

§ 1154.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§ 1154.605 Definitions.

(a) Except as amended in this section, the definitions of § 1154.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include

technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§ 1154.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 1154.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § 1154.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§ 1154.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1154.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 1154.320(a)(2) of this part).

§ 1154.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1154.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

APPENDIX A TO PART 1154—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B—Certification Regarding Debarment, Suspension, Ineligibilty and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 1154—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 20 U.S.C. 959(a)(1).

SOURCE: 53 FR 8081, 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, March 11, 1988.

Subpart A—General

§ 1157.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 1157.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 1157.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a grant; (3) refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1157.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1157.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in

§ 1157.4(a) (3) through (8) are subject to Subpart E.

§ 1157.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1157.6.

§ 1157.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1157.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1157.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the

assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1157.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 1157.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash,

real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1157.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1157.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1157.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.

For the costs of a—	Use the principles in—
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency

§ 1157.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 1157.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 1157.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1157.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards

satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1157.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1157.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1157.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1157.31 and 1157.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall

be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1157.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 1157.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 1157.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 1157.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1157.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1157.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1157.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1157.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 1157.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and

any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1157.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1157.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1157.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1157.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 1157.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its es-

sential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition*. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1157.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1157.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use

of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 1157.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 1157.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1157.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1157.10;

(2) Section 1157.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 1157.21; and

(4) Section 1157.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 1157.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after

the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1157.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 1157.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1157.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1157.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1157.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1157.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1157.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1157.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1157.41(b)(2).

§ 1157.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1157.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1157.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 1157.35).

§ 1157.44 Termination for convenience.

Except as provided in § 1157.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1157.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1157.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:*

In accordance with § 1157.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1157.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

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(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1157.42;

(d) Property management requirements in §§ 1157.31 and 1157.32; and

(e) Audit requirements in § 1157.26.

§ 1157.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Chapter II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements [Reserved]

SUBCHAPTER C—FEDERAL COUNCIL ON THE ARTS AND THE HUMANITIES

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

Sec.
1160.1 Purpose and scope.
1160.2 Federal Council on the Arts and the Humanities.
1160.3 Definitions.
1160.4 Application for indemnification.
1160.5 Certificate of national interest.
1160.6 Indemnity agreement.
1160.7 Letter of intent.
1160.8 Loss adjustment.
1160.9 Certification of claim and amount of loss to the Congress.
1160.10 Arbitration and appraisal.
1160.11 Indemnification limits.

AUTHORITY: Sec. 2(a)(2) of the Arts and Artifacts Indemnity Act (Pub. L. 94-198).

SOURCE: 41 FR 29385, July 16, 1976, unless otherwise noted.

§ 1160.1 Purpose and scope.

This part sets forth the exhibition indemnity procedures of the Federal Council on the Arts and the Humanities under the Arts and Artifacts Indemnity Act (Pub. L. 94-158) as required by section 2(a)(2) of the Act. An indemnity agreement made under these regulations shall cover either: (1) eligible items from the United States while on exhibition elsewhere when they are part of an exchange of exhibitions, or (2) eligible items from abroad while on exhibition in the United States, whether or not they are part of an exchange of exhibitions, but in no case shall both parts of such an exchange of exhibitions be covered. Internal guidance for staff of the Federal Council on the Arts and the Humanities and clarifications of the Act and of these regulations are contained or will be contained in circulars of the National Foundation on the Arts and the Humanities.

§ 1160.2 Federal Council on the Arts and the Humanities.

In accordance with the directive contained in the President's statement upon approving the legislation on December 20, 1975, the Federal Council on the Arts and the Humanities, for the purposes of this part (45 CFR 1160), shall be composed of the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the United States Commissioner of Education, the Director of the National Science Foundation, the Librarian of Congress, the Chairman of the Commission of Fine Arts, the Archivist of the United States, the Commissioner, Public Buildings Service, General Services Administration, a member designated by the Secretary of State, and a member designated by the Secretary of the Interior.

§ 1160.3 Definitions.

For the purposes of this part:

(a) "Council" means the Federal Council on the Arts and the Humanities as defined in § 1160.2.

(b) "Endowment" means either the National Endowment for the Arts or the National Endowment for the Humanities.

(c) "Foundation" means the National Foundation on the Arts and the Humanities.

(d) "Letter of Intent" means an agreement by the Council to provide an indemnity covering a future exhibition subject to compliance with all requirements at the date the indemnity is to be effective.

(e) "Lender" means the owner and any person or organization authorized by him to act with respect to the object and exhibition involved.

(f) "Eligible item" means an object which qualifies for coverage under the Arts and Artifacts Indemnity Act.

(g) "Exhibition" means a public display of an indemnified item(s) at one or more locations, as approved by the Council, presented by any person, nonprofit agency, institution, or Government, in the United States or elsewhere.

(h) "On Exhibition" means the period of time beginning on the date an indemnified item leaves the place designated by the lender and ending on the termination date.

(i) "Indemnity Agreement" means the contract between the Council and the indemnitee covering loss or damage to indemnified items under the authority of the Arts and Artifacts Indemnity Act.

(j) "Indemnitee" means the party or parties to an indemnity agreement issued by the Council, to whom the promise of indemnification is made.

(k) "Termination date" means the date 30 days after the date specified in the application by which an indemnified item is to be returned to the place designated by the lender or the date on which the item is actually so returned, whichever date is earlier. (In museum terms this means wall-to-wall coverage.) After 11:59 p.m. on the termination date, the item is no longer covered by the indemnity agreement unless an extension has theretofore been requested by the indemnitee and granted by the Council.

§ 1160.4 Application for indemnification.

An applicant for an indemnity shall submit an Application for Indemnification, addressed to the Federal Council on the Arts and the Humanities, National Foundation on the Arts and the Humanities, Washington, DC 20506, which shall describe as fully as possible at the time the application is submitted:

(a) The time, place, nature, and Project Director/Curator of the exhibition for which the indemnity is sought, which factors should be clearly and specifically delineated;

(b) Evidence that the owner and present possessor are willing to lend the eligible items, and both are prepared to be bound by the terms of the indemnity agreement;

(c) The total estimated value of all items to be indemnified, including a description of each item to be covered by the agreement and each item's estimated value;

(d) The source of valuations of each item, plus an overall appraisal by the indemnity applicant of the valuations established by others;

(e) The significance, and the educational, cultural, historical, or scientific value of the items as proposed to be exhibited and to be the subject of indemnification;

(f) Statements describing policies, procedures, techniques, and methods to be employed with respect to:

(1) Packing of items at the premises of, or the place designated by, the lender;

(2) Shipping arrangements;

(3) Condition reports at lender's location;

(4) Condition reports at borrower's location;

(5) Condition reports upon return of items to lender's location;

(6) Security during the exhibition and security during transportation, including escorts where applicable;

(7) Maximum values to be transported in a single instrumentality of transport;

(g) Insurance arrangements, if any, which are proposed to cover the first $15,000 deductible of loss or the excess over the amount indemnified;

(h) Any loss incurred by the indemnitee or other groups involved in the exhibition in question during the three years prior to the Application for Indemnification which involved a borrowed or loaned item(s) or item(s) in their permanent collections where the amount of loss exceeded $15,000. Details should include the date of loss, nature and cause of damage, and appraised value of the damaged item(s) both before and after loss;

(i) If the application is for an exhibition which will take place outside the United States, the applicant should set forth in detail the nature of the exchange of exhibitions of which it is a part, including all circumstances surrounding the exhibition being shown in the United States, with particular emphasis on facts concerning insurance or indemnity arrangements.

(j) Upon proper submission of the above required information an application will be selected or rejected for indemnification by the Council on the basis of (1) review of educational, cultural, historical or scientific value as required under the provisions of the Arts and Artifacts Indemnity Act; (2) certification by the Secretary of State or his designee that the exhibition is in the national interest; and (3) review of the availability of indemnity obligational authority under section 5(b) of the Arts and Artifacts Indemnity Act.

§ 1160.5 Certificate of national interest.

After preliminary review the application will be submitted to the Secretary of State or his designee for determination of national interest and issuance of a Certificate of National Interest in appropriate cases.

§ 1160.6 Indemnity agreement.

In cases where the requirements of §§ 1160.4 and 1160.5 have been met to the satisfaction of the Council, an Indemnity Agreement pledging the full faith and credit of the United States for the agreed value of the exhibition in question may be issued to the indemnitee by the Council, subject to the provisions of § 1160.7.

§ 1160.7 Letter of intent.

In cases where an exhibition proposed for indemnification is planned to commence on a date later than twelve (12) months subsequent to the submission of the application, the Council, upon approval of such a preliminary application, will provide a Letter of Intent stating that it will, subject to the conditions set forth therein, issue an Indemnity Agreement not later than ninety (90) days prior to commencement of the exhibition. In such cases, the Council will reexamine a final application during the twelve (12) month period prior to the date the exhibition is to commence, and shall, upon being satisfied that such conditions have been fulfilled, issue an Indemnity Agreement within the above specified time period.

§ 1160.8 Loss adjustment.

(a) In the event of loss or damage covered by an Indemnity Agreement, the indemnitee without delay shall file a Notice of Loss or Damage with the Council and shall exercise reasonable care in order to minimize the amount of loss. Within a reasonable time after a loss has been sustained, the claimant shall file a Proof of Loss or Damage on forms provided by the Council. Failure to report such loss or damage and to file such Proof of Loss within sixty (60) days after the termination date as defined in § 1160.3(k), shall invalidate any claim under the Indemnity Agreement.

(b) In the event of total loss or destruction of an indemnified item, indemnification will be made on the basis of the amount specified in the Indemnity Agreement.

(c) In the event of partial loss, or damage, and reduction in the fair market value, as a result thereof, to an indemnified item, indemnification will be made on the basis provided for in the Indemnity Agreement.

(d) No loss or damage claim will be paid in excess of the Indemnification Limits specified in § 1160.11.

§ 1160.9 Certification of claim and amount of loss to the Congress.

Upon receipt of a claim of total loss or a claim in which the Council is in agreement with respect to the amount of partial loss, or damage and reduction in fair market value as a result thereof, the Council shall certify the validity of the claim and the amount of such loss, or damage and reduction in fair market value as a result thereof, to the Speaker of the House of Representatives and the President pro tempore of the Senate.

§ 1160.10 Arbitration and appraisal.

(a)(1) In the event the Council and the indemnitee fail to agree on the amount of partial loss, or damage to, or any reduction in the fair market value as a result thereof, to the indemnified item(s), each shall select a competent appraiser(s) with evidence to be provided to show that the indemnitee's selection is satisfactory to the owner. The appraiser(s) selected by the Council and the indemnitee shall then select a competent and disinterested umpire.

(2) In the event the appraisers, within fifteen (15) days of their appointment, do not agree upon the selection of an umpire, either party may request that an umpire be selected by a federal district judge in the District of Columbia.

(b) After selection of an umpire, the appraisers shall assess the partial loss, or damage to, or where appropriate, any reduction in the fair market value of, the indemnified item(s). The appraisers' agreement with respect to these issues shall determine the dollar value of such loss or damage or repair costs, and where appropriate, such reduction in the fair market value. Disputes between the appraisers with respect to partial loss, damage repair costs, and fair market value reduction of any item shall be submitted to the umpire for determination. The appraisers' agreement or the umpire's determination shall be final and binding on the parties, and agreement on amount or such determination on amount shall be certified to the Speaker of the House and the President pro tempore of the Senate by the Council.

(c) Each appraiser shall be paid by the party selecting him or her. The umpire and all other expenses of the appraisal shall be paid by the parties in equal shares.

§ 1160.11 Indemnification limits.

(a) The maximum loss or damage covered by a single exhibition or an Indemnity Agreement shall be $50,000,000.

(b) A deductible amount of $15,000 is applicable to loss or damage arising out of a single exhibition for which an indemnity is issued.

(c) The aggregate amount of loss or damage covered by indemnity agreements at any one time shall not exceed $250,000,000.

(d) The maximum value of eligible items carried in or upon any single instrumentality of transportation at any one time, unless expressly permitted by the Council shall not exceed $7,500,000.

SUBCHAPTER D—NATIONAL ENDOWMENT FOR THE HUMANITIES

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C TO PART 1169—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 959(a)(1).

SOURCE: 53 FR 19201 and 19204, May 26, 1988, unless otherwise noted.

EDITORIAL NOTES:

(1) For nomenclature change to Part 1169, see 53 FR 19202, May 26, 1988.

(2) For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474, September 6, 1988.

Subpart A—General

§ 1169.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 1169.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1169.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) [Reserved]

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *NEH.* National Endowment for the Humanities.

[53 FR 19201, 19202, and 19204, May 26, 1988]

§ 1169.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 1169.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1169.110(a). Sections 1169.325, "Scope of debarment," and 1169.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 1169.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1169.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 1169.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1169.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 1169.205 Ineligible persons.

Persons who are ineligible, as defined in § 1169.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 1169.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1169.315 are excluded in accordance with the terms of their settlements. NEH shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 1169.215 Exception provision.

NEH may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 1169.200 of this rule. However, in accordance with the President's stated intention in the Executive order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1169.505(a).

§ 1169.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1169.215.

§ 1169.225 Failure to adhere to restrictions.

Except as permitted under § 1169.215 or § 1169.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1169.300 General.

The debarring official may debar a person for any of the causes in § 1169.305, using procedures established in §§ 1169.310 through 1169.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1169.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1169.300 through 1169.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1169.215 or § 1169.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1169.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 1169.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

§ 1169.310 Procedures.

NEH shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1169 .311 through 1169.314.

§ 1169.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 1169 .312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1169.305 for proposing debarment;

(d) Of the provisions of §§ 1169.311 through 1169.314, and any other NEH procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 1169.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1169.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1169.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1169.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, NEH may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 1169.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* 1169.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1169.311 through 1169.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4964, Jan. 31, 1989]

§ 1169.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1169.311 through 1169.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 1169.400 General.

(a) The suspending official may suspend a person for any of the causes in § 1169.405 using procedures established in §§ 1169.410 through 1169.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1169.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1169.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 1169.400 through 1169.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1169.305(a); or

(2) That a cause for debarment under § 1169.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1169.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* NEH shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1169.411 through § 1169.413.

§ 1169.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1169.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 1169.411 through § 1169.413 and any other NEH procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1169.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1169.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1169.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: Based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1169.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 1169.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 1169.325), except that the procedures of §§ 1169.410 through 1169.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, NEH and Participants

§ 1169.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 1169.505 NEH responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which NEH has granted exceptions under § 1169.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1169.500(b) and of the exceptions granted under § 1169.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) NEH officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) NEH officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1169.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to NEH if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 54 FR 4965, Jan. 31, 1989, unless otherwise noted.

§ 1169.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§ 1169.605 Definitions.

(a) Except as amended in this section, the definitions of § 1169.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged

with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§ 1169.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 1169.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § 1169.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§ 1169.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1169.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 1169.320(a)(2) of this part).

§ 1169.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1169.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspend-

ed, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 1169—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4965, Jan. 31, 1989]

PART 1170—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES

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AUTHORITY: E.O. 11914; sec. 504, Rehabilitation Act of 1973, as amended (Pub. L. 93-112) (29 U.S.C. 794), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

SOURCE: 46 FR 55897, Nov. 12, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1170.1 Purpose.

The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1170.2 Application.

This part applies to each recipient of Federal financial assistance from the National Endowment for the Humanities and to each program or activity that receives or benefits from such assistance.

§ 1170.3 Definitions.

As used in this part:

(a) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794 *et seq.* and by the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95-602.

(b) The term "Endowment" or the term "agency" means the National Endowment for the Humanities.

(c) The term "Chairman" means the Chairman of the National Endowment for the Humanities.

(d) The term "responsible Endowment official" with respect to any program receiving Federal financial assistance means the Chairman of the Endowment, the Director of the Office of Equal Employment Opportunity, or other Endowment official designated by the Chairman.

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal government.

(g) The term "program" includes any program, project, or activity involving the provision of services, financial aid, or other benefits to individuals (including education or training, health, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for provision of facilities for furnishing services, financial aid or other benefits to individuals. The service, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(i) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(j) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of section 504, in connection with employment, this term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or the safety of others. As used in this paragraph, the phrase:

(1) "Physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (j)(1) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question and

(2) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(3) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§ 1170.4 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§§ 1170.5—1170.10 [Reserved]

Subpart B—Discrimination Prohibited

§ 1170.11 General prohibition against discrimination.

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

§ 1170.12 Discriminatory actions prohibited.

(a) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or

service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(b) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(c) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration.

(1) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(2) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(3) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(d) A recipient may not, in determining the site or location of a facility, make selections

(1) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or

(2) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(e) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(f) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(g) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 1170.13 Illustrative examples.

(a) The following examples will illustrate the application of the foregoing provisions to some of the activities funded by the National Endowment for the Humanities.

(1) A publication or a museum catalogue supported by the Endowment may be made usable by the blind and the visually impaired through cassette tapes, records, discs, braille, readers and simultaneous publications.

(2) A lecture, meeting or symposium supported by Federal funds may be made available to deaf and hearing impaired persons through the use of a sign language interpreter or by providing scripts in advance of the performance.

(3) Specific programs supported by Federal funds may be offered in an inaccessible facility provided that the

same program is also offered to the public at large in an accessible space.

(4) A qualified handicapped person is one who is able to meet all of a program's requirements in spite of his handicap. An educational institution is not required to disregard the disabilities of handicapped individuals or to lower or to make substantial modifications of standards to accommodate a handicapped person.

(b) State humanities committees are obligated to develop methods of administering Federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by sub-grantees or by the manner in which the funds are distributed.

(c) In the event Endowment funds are utilized to construct, expand, alter, lease or rent a facility, the benefits of the programs and activities provided in or through that facility must be conducted in accordance with these regulations, e.g., a museum receiving a grant to renovate an existing facility must assure that all museum programs and activities conducted in that facility are accessible to handicapped persons.

(d) In carrying out the mandate of section 504 and these implementing regulations recipients should administer Endowment assisted programs and activities in the most integrated setting appropriate, e.g., tours made available to the hearing impaired should be open to the public at large and everyone should be permitted to enjoy the benefits of a tactile experience in a museum.

§§ 1170.14—1170.20 [Reserved]

Subpart C—Employment Practices

§ 1170.21 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(d) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 1170.22 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

§ 1170.23 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria are unavailable.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or other factors relevant to adequate performance of the job in question.

§ 1170.24 Preemployment inquiries.

(a) A recipient may not, except as provided below, conduct a preemployment medical examination, make preemployment inquiry as to whether the applicant is a handicapped person, or inquire as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) If a recipient is taking remedial action to correct the effects of past discrimination, if a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or if a recipient is taking affirmative action under section 503 of the Rehabilitation Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 1170.25—1170.30 [Reserved]

Subpart D—Program Accessibility

§ 1170.31 Discrimination prohibited.

No qualified handicapped person shall, because recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 1170.32 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1170.33, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer program and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available upon request for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 1170.33 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI A 117.1—1961[R 1971]) (Copies obtainable at $2.75 each from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018), shall constitute compliance with paragraph (a) of this section. Departures from the ANSI standards by the use of comparable standards shall be permitted when it is clearly evident that equivalent access to the facility of part of the facility is thereby provided.

§ 1170.34 Historic properties. [Reserved]

§§ 1170.35—1170.40 [Reserved]

Subpart E—Postsecondary Education

§ 1170.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 1170.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Chairman to be available.

(3) Shall assure itself that:

(i) Admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) Admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) Admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1170.52(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1170.52(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, provided, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 1170.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 1170.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibitation of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 1170.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart D, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 1170.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart C if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart C.

§ 1170.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 1170.43(d) and only if no qualified handicapped student is denied the opportunity to compete for

teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

§§ 1170.48—1170.50 [Reserved]

Subpart F—Enforcement

§ 1170.51 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the responsible Endowment official, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Endowment.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Endowment, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Endowment, the covenant shall also include a condition coupled with a right to be reserved by the Endowment to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or to otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the responsible Endowment official may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 1170.52 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Chairman finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Chairman deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Chairman, where appropriate, may require either or both recipients to take remedial action.

(3) The Chairman may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, or

(ii) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) A recipient shall within one year of the effective date of this part:

(1) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(2) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part;

(3) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(4) A recipient that employs fifteen or more persons shall maintain on file, make available for public inspection, and provide to the Endowment upon request, for at least three years following completion of the self-evaluation:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

(5) The completed self-evaluation should be signed by a responsible official designated to coordinate the recipient's efforts in connection with this section.

§ 1170.53 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 1170.54 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 1170.53(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 1170.55 Endowment enforcement and compliance procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 1110.6 through 1110.11 of Part 1100 of this title.

§§ 1170.56—1170.99 [Reserved]

PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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Subpart A—General

§ 1174.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 1174.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 1174.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a grant; (3) refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1174.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1174.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 1174.4(a) (3) through (8) are subject to Subpart E.

§ 1174.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1174.6.

§ 1174.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1174.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1174.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1174.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 1174.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1174.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1174.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1174.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 1174.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 1174.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 1174.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1174.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were tc pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regu-

lar rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1174.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1174.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1174.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1174.31 and 1174.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1174.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hos-

pitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 1174.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 1174.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 1174.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1174.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1174.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1174.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1174.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 1174.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance

with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1174.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1174.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1174.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1174.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 1174.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest,

real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A pro-

testor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1174.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1174.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 1174.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 1174.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1174.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1174.10;

(2) Section 1174.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 1174.21; and

(4) Section 1174.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 1174.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a

statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1174.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 1174.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form*. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements*. Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees*. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date*. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments*. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements*. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1174.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs*. (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1174.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1174.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1174.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1174.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1174.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis*. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1174.41(b)(2).

§ 1174.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1174.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1174.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under Executive Order 12549 (see § 1174.35).

§ 1174.44 Termination for convenience.

Except as provided in § 1174.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1174.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1174.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 1174.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1174.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1174.42;

(d) Property management requirements in §§ 1174.31 and 1174.32; and

(e) Audit requirements in § 1174.26.

§ 1174.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements [Reserved]

PART 1175—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4578 and 4579, Feb. 5, 1986, unless otherwise noted.

§ 1175.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1175.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1175.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1175.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4578 and 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 1175.104—1175.109 [Reserved]

§ 1175.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 1175.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1175.112—1175.129 [Reserved]

§ 1175.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1175.131—1175.139 [Reserved]

§ 1175.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1175.141—1175.148 [Reserved]

§ 1175.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1175.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1175.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1175.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4578 and 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 1175.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1175.152—1175.159 [Reserved]

§ 1175.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1175.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1175.161—1175.169 [Reserved]

§ 1175.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Equal Opportunity, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 419, Washington, DC 20506.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1175.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4578 and 4579, Feb. 5, 1986, as amended at 51 FR 4578, Feb. 5, 1986]

§§ 1175.171—1175.999 [Reserved]

PART 1176—PART-TIME CAREER EMPLOYMENT

Sec.
1176.1 General.
1176.2 Definitions.
1176.3 Criteria.
1176.4 Establishing and converting part-time positions.
1176.5 Annual plan.
1176.6 Review and evaluation.
1176.7 Publicizing vacancies.
1176.8 Exceptions.
1176.9—1176.99 [Reserved]

AUTHORITY: Federal Employees Part-Time Career Employment Act of 1978, Pub. L. 95-437, 92 Stat. 1055, 5 U.S.C. 3401-3408.

SOURCE: 46 FR 35647, July 10, 1981, unless otherwise noted.

§ 1176.1 General.

(a) *Purpose.* Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who require a reduced workweek, providing parents with opportunities to balance family responsibilities with the need for added income, and assisting students who must finance their own education or vocational training. In view of this, the National Endowment for the Humanities will operate a part-time career employment program, consistent with its responsibilities and in accordance with Pub. L. 95-437, the Federal Employees' Part-Time Career Employment Act of 1978.

(b) *Program Coordinator.* The Personnel Officer is responsible for program operation and coordination.

§ 1176.2 Definitions.

(a) "Part-time employment" means employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to the Act or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

(b) "Career employment" includes competitive and excepted service employees in tenure groups I and II.

§ 1176.3 Criteria.

Positions becoming vacant, unless excepted as provided by § 1176.8, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

(a) Mission requirements.

(b) Workload.

(c) Employment ceilings and budgetary considerations.

(d) Availability of qualified applicants willing to work part-time.

§ 1176.4 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed in § 1176.3 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

§ 1176.5 Annual plan.

(a) An agencywide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, and will be transmitted to the Office of Personnel Management with the required report to OPM on the status of the program as of September 30 of each year.

(b) Beginning in FY 1981 in administering personnel ceilings, part-time career employees shall be counted against ceiling authorizations as a fraction. This will be determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

§ 1176.6 Review and evaluation.

Regular employment reports will be used to determine levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

§ 1176.7 Publicizing vacancies.

When applicants from outside the Federal service are desired, part-time vacanies may be publicized through various recruiting means, such as:

(a) Federal Job Information Centers.

(b) State Employment Offices.

(c) Veterans' Administration Recruiting Bulletins.

§ 1176.8 Exceptions.

(a) The Personnel Officer may except positions from inclusion in this program to provide fewer than 16 hours per week. This will normally be done in furtherance of special hiring programs such as the Stay-in-School or Handicapped Employment Program.

(b) On occasions when it becomes necessary to allow supervisors and managers to temporarily increase the hours of duty of employees above 32 hours per week for limited and specific periods of time to meet heavy workloads, perform special assignments, permit employee training, etc., the Endowment policy is as follows:

(1) Requests to work NEH employees on a 32 hour/week appointment more than 32 hours must be submitted in advance to the Personnel Office;

(2) Justification should be concise but specific and must state the exact time frame for the increase in hours above 32 hours per week; and

(3) The Program Coordinator will decide if the request meets the intent of the law and this agency's policy.

§§ 1176.9—1176.99 [Reserved]

PART 1177—CLAIMS COLLECTION

Sec.
1177.1 Purpose and scope.
1177.2 Definitions.
1177.3 Other remedies.
1177.4 Claims involving criminal activity or misconduct.
1177.5 Collection.
1177.6 Notice to debtor.
1177.7 Interest, penalties, and administrative costs.
1177.8 Administrative offset.
1177.9 Use of credit reporting agencies.
1177.10 Collection services.
1177.11 Referral to the Department of Justice or the General Accounting Office.
1177.12 Compromise, suspension and termination.
1177.13 Omissions not a defense.
1177.14—1177.99 [Reserved]

AUTHORITY: 31 U.S.C. 3711, 3716-3719.

SOURCE: 51 FR 20484, June 5, 1986, unless otherwise noted.

§ 1177.1 Purpose and scope.

This part prescribes standards and procedures for officers and employees of the National Endowment for the Humanities who are responsible for the collection and disposition of debts owed to the United States. The authority for this part is the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716 through 3719; the Federal Claims Collection Standards at 4 CFR Parts 101 through 105, as amended by 49 FR 8889, 5 U.S.C. 552a, and Office of Management and Budget Circular A-129. The activities covered include: collecting claims in any amount; compromising claims, or suspending or terminating the collection of claims that do not exceed $20,000 exclusive of interest and charges, and referring debts that cannot be disposed of by the Endowment to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 1177.2 Definitions.

For the purpose of this part the following definitions will apply:

(a) "Claim" or "debt" means an amount of property owed to the United States. These include but are not limited to: Overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue or delinquent if it is not paid by the due date specified in the initial notice of the debt (see § 1177.6 of this part) or if the debtor fails to satisfy his or her obligation under a repayment agreement.

(b) "Debtor" means an individual, organization, group, association, partnership, or corporation indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

(c) "Endowment" means the National Endowment for the Humanities.

(d) "Administrative offset" means satisfying a debt by withholding money payable by the United States to or held by the United States for a debtor.

§ 1177.3 Other remedies.

The remedies and sanctions available to the National Endowment for the Humanities under this part are not intended to be exclusive. The Chairperson of the National Endowment for the Humanities or his designee may impose other appropriate sanctions upon a debtor for prolonged or repeated failure to pay a debt. For example, the Chairperson or his designee may place the debtor's name on a list of debarred, suspended, or ineligible grantees and contractors, convert the method of payment under a grant from an advance to a reimbursement method, or revoke a grantee's letter of credit. In such cases the debtor will be advised of the Endowment's action.

§ 1177.4 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity such as fraud, embezzlement, theft, or misuse of government funds or property is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds. The Endowment will refer these cases to the appropriate law enforcement agency for prosecution.

(b) Debts involving fraud, false, claims, or misrepresentation shall not be compromised, terminated, suspended, or otherwise disposed of under this rule. Only the Department of Justice is authorized to compromise, terminate, suspend, or otherwise dispose of such debts.

§ 1177.5 Collection.

(a) The Endowment will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30 day intervals. When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor or his or her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, to discuss the debtor's position regarding the existence, amount and repayment of the debt, and to inform the debtor of his or her rights and the effect of nonpayment or delayed payment. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) If a debtor is involved in insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim. The United States may have a priority over other creditors under 31 U.S.C. 3713.

§ 1177.6 Notice to debtor.

The first written demand for payment must inform the debtor of the following:

(a) The amount and nature of the debt:

(b) The date payment is due, which will generally be 30 days from the date the notice was mailed;

(c) The assessment of interest under § 1177.7 from the date the notice was mailed if payment is not received within the 30 days;

(d) The right to dispute the debt;

(e) The office, address and telphone number that the debtor should contact to discuss repayment and reconsideration of the debt and;

(f) The sanctions available to the National Endowment for the Humanities to collect a delinquent debt including, but not limited to, referral of the debt to a credit reporting agency, a private collection bureau, or the Department of Justice for litigation.

§ 1177.7 Interest, penalties, and administrative costs.

(a) Interest will accrue on all debts from the date when the first notice of the debt and the interest requirement is mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date the first notice was mailed. The Endowment will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the FEDERAL REGISTER and the Treasury Financial Manual Bulletins.

(b) The rate of interest initially assessed will remain fixed for the duration of the indebtedness, except that if a debtor defaults on a repayment agreement interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(c) The Endowment shall charge debtors for administrative costs incurred in handling overdue debts.

(d) Interest will not be charged on administrative costs.

(e) The Endowment shall assess a penalty charge, not to exceed 6 per cent per year on debts which have been delinquent for more than 90 days. This charge shall accrue from the date that the debt became delinquent.

(f) The Chairperson or his designee may waive in whole or in part the collection of interest and administrative and penalty charges if determined that collection would be against equity or not in the best interests of the

United States. The Endowment shall waive the collection of interest on the debt or any part of the debt which is paid within 30 days after the date on which interest began to accrue.

§ 1177.8 Administrative offset.

(a) The Endowment may collect debts owed by administrative offset if:

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be unsuccessful, or the Endowment and the debtor agree to the offset;

(3) Offset is cost effective or has significant deterrent value; and

(4) Offset is best suited to further and protect the Government's interest.

(b) The Endowment may offset a debt owed to another Federal agency from amounts due or payable by the Endowment to the debtor or request another Federal agency to offset a debt owed to the Endowment;

(c) Prior to initiating administrative offset, the National Endowment for the Humanities will send the debtor written notice of the following:

(1) The nature and amount of the debt and the agency's intention to collect the debt by offset 30 days from the date the notice was mailed if neither payment nor a satisfactory response is received by that date;

(2) The debtor's right to an opportunity to submit a good faith alternative repayment schedule to inspect and copy agency records pertaining to the debt, to request a review of the determination of indebtedness; and to enter into a written agreement to repay the debt and;

(3) The applicable interest.

(d) The National Endowment for the Humanities may effect an administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (c) of this section if:

(1) Failure to offset would substantially prejudice the Government's ability to collect the debt and

(2) The time before the payment is to be made does not reasonably permit completion of those procedures.

§ 1177.9 Use of credit reporting agencies.

(a) The Endowment may report delinquent accounts to credit reporting agencies consistent with the notice requirements contained in the § 1177.6 of this part. Individual debtors must be given at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency.

(b) Debts may be reported to consumer or commercial reporting agencies. Consumer reporting agencies are defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Endowment may disclose only an individual's name, address, social security number, and the nature, amount, status and history of the debt and the program under which the claim arose.

§ 1177.10 Collection services.

(a) The Endowment may contract for collection services to recover outstanding debts. The Endowment may refer delinquent debts to private collection agencies listed on the schedule compiled by the General Services Administration. In such contracts, the National Endowment for the Humanities will retain the authority to resolve disputes, compromise claims, terminate or suspend collection, and refer the matter to the Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor shall be strictly accountable for all amounts collected.

(c) The contractor shall be required to provide to the Endowment any data contained in its files relating to the debt account upon agency request or upon returning an account to the Endowment for referral to the Department of Justice for litigation.

§ 1177.11 Referral to the Department of Justice or the General Accounting Office.

Debts over $600 but less than $100,000 which the Endowment determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding $100,000 shall be referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1177.12 Compromise, suspension and termination.

(a) The Chairperson of the National Endowment for the Humanities or his designee may compromise, suspend or terminate the collection of debts where the outstanding principal is not greater than $20,000. Endowment procedures for writing off outstanding accounts are available to the public.

(b) The Chairperson of the National Endowment for the Humanities may compromise, suspend or terminate collection of debts where the outstanding principal is greater than $20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the National Endowment for the Humanities will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1177.13 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

§ 1177.14—1177.99 [Reserved]

PART 1178—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

Sec.
1178.1 Purpose and scope.
1178.2 Withdrawal of information.

AUTHORITY: 39 U.S.C. 3220.

§ 1178.1 Purpose and scope.

(a) The Chairperson of the National Endowment for the Humanities (NEH) may direct the agency to use penalty mail to assist in the location and recovery of missing children. When determined to be appropriate and cost-effective, the National Endowment for the Humanities may print, insert or use any other effective method to affix pictures and biographical data relating to missing children on NEH mail. The contact person for matters related to the implementation of this part is Tracy J. Joselson, Esq. Office of the General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0322.

(b) The National Center for Missing and Exploited Children will be the exclusive source from which the National Endowment for the Humanities will obtain photographic and biographical information for dissemination to the public.

(c) It is estimated that the National Endowment for the Humanities will incur no additional costs to implement this program during its initial year. This estimate is based on a review of Endowment mailings that would maximize dissemination of this information.

[51 FR 20974, June 10, 1986]

§ 1178.2 Withdrawal of information.

The National Endowment for the Humanities will withdraw or exhaust the supply of all materials bearing the photograph and biographical information of a missing child within a three month period from the date the National Center for Missing and Exploited Children receives notice that the child has been recovered or that the parents or guardian of the child have revoked permission to use the information. The National Center for Missing and Exploited Children will be responsible for immediately notifying the agency contact, in writing, of the need to withdraw or remove this material.

[51 FR 20974, June 10, 1986]

PART 1179—SALARY OFFSET

1179.1 Purpose and scope.
1179.2 Definitions.
1179.3 Applicability.
1179.4 Notice requirements.
1179.5 Hearing.
1179.6 Written decision.
1179.7 Coordinating offset with another Federal agency.
1179.8 Procedures for salary offset.

1179.9 Refunds.
1179.10 Statute of limitations.
1179.11 Non-waiver of rights.
1179.12 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514, E.O. 11809 (redesignated E.O. 12107), and 5 CFR Part 550, Subpart K.

SOURCE: 52 FR 28472, July 30, 1987, unless otherwise noted.

§ 1179.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal government. These regulations apply to all Federal employees who owe debts to the National Endowment for the Humanities (NEH) and to current employees of the National Endowment for the Humanities who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act 31 U.S.C. 3711 *et seq.* 4 CFR Parts 101 through 105 45 CFR Part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1179.2 Definitions.

For the purposes of the part the following definitions will apply:

"*Agency*" means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

"*Chairperson*" means the Chairperson of the National Endowment for the Humanities or the Chairperson's designee.

"*Creditor agency*" means the agency to which the debt is owed.

"*Debt*" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales or real or personal property, overpayments, penalties, damages, interests, fines, forfeitures, (except those arising under the Uniform Code of Military Justice) and all other similar sources.

"*Disposable pay*" means the amount that remains from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

"*Hearing official*" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairperson of the National Endowment for the Humanities.

"*Paying Agency*" means the agency that employes the individual who owes the debt and authorizes the payment of his/her current pay.

"*Salary offset*" means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1179.3 Applicability.

(a) These regulations are to be followed when:

(1) The National Endowment for the Humanities is owed a debt by an individual currently employed by another Federal agency;

(2) The National Endowment for the Humanities is owed a debt by an individual who is a current employee of the National Endowment for the Humanities; or

(3) The National Endowment for the Humanities employs an individual who owes a debt to another Federal agency.

§ 1179.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Chairperson of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect, request, or receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be prompty refunded to the employee.

§ 1179.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset. (2) A hearing may be requested by filing a written petition addressed to the Chairperson of the National Endowment for the Humanities stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Chairperson no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official. (2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1179.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1179.7 Coordinating offset with another Federal agency.

(a) *The Endowment as the creditor agency.* (1) When the Chairperson determines that an employee of a Federal agency owes a delin[illegible]nt debt to the National Endowmen[illegible]or the Humanities, the Chairperson shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that Endowment regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the Chairperson must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, the Endowment must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the creditor agency. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Chairperson may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The Endowment as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the National Endowment for the Humanities has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The National Endowment for the Humanities shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the National Endowment for the Humanities and before the debt is collected completely, the National Endowment for the Humanities must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1179.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chairperson's notice of intention to offset as provided in § 1179.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary payment or leave in accordance with 31 U.S.C. 3716.

§ 1179.9 Refunds.

(a) The National Endowment for the Humanities will refund promptly any amounts deducted to satisfy debts owed to the NEH when the debt is waived, found not owed to the NEH, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by NEH to satisfy debts owed to the creditor agency when the debt is waived found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this section shall not bear interest.

§ 1179.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1179.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract law unless there are statutes or contract(s) to the contrary.

§ 1179.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

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APPENDIX A

AUTHORITY: 20 U.S.C. 961 et seq., unless otherwise noted.

SOURCE: 48 FR 27728, June 17, 1983, unless otherwise noted.

Subpart A—General Operating Support; Conservation Grants

§ 1180.1 Purpose of museum services program.

The purpose of this program of Federal financial assistance is to ease the financial burden borne by museums as a result of their increasing use by the public and to encourage and assist them to carry out their educational and conservation roles as well as other functions and to modernize their methods and facilities.

§ 1180.2 Scope of this document.

This document establishes rules for the award of grants to museums from funds appropriated under the Museum Services Act including rules governing the eligibility of applicant institutions, the type of assistance which may be provided, requirements which applicants must meet and criteria to be used in judging applications.

§ 1180.3 Definition of museum.

For the purpose of this part:

(a) "Museum means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff:

(1) Owns or uses tangible objects, either animate or inanimate;

(2) Cares for these objects; and

(3) Exhibits them to the general public on a regular basis.

(i) An institution which exhibits objects to the general public for at least 120 days a year shall be deemed to meet this requirement.

(ii) An institution which exhibits objects by appointment may meet this requirement if it can establish, in light of the facts under all the relevant circumstances, that this method of exhibition does not unreasonably restrict the accessibility of the institution's exhibits to the general public.

(b) "Museum" includes (but is not limited to) the following institutions if they satisfy the provisions of this section:

(1) Aquariums and zoological parks;

(2) Botanical gardens and arboretums;

(3) Nature Centers;

(4) Museums relating to art, history (including historic buildings), natural history, science and technology; and

(5) Planetariums.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution.

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution which does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion

of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section in making a determination regarding the eligibility of such an institution under this section.

(e) For the purpose of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

[48 FR 27728, June 17, 1983, as amended at 50 FR 27587, July 5, 1985]

§ 1180.4 Other definitions.

The following other definitions apply in this document:

"Act" means the Museum Services Act, Title II of the Arts, Humanities and Cultural Affairs Act of 1976, Pub. L. 94-462 (20 U.S.C. 961-968).

"Board" means the National Museum Services Board established under Section 204 of the Act.

"Collection" includes objects owned, used or loaned by a museum as well as those literary, archival and documentary resources specifically required for the study and interpretation of these objects.

"Foundation" means the National Foundation on the Arts and the Humanities.

"Director" means the Director of the Institute of Museum Services.

"Grantee" means the recipient of a grant under the Act.

"Institute" means the Institute of Museum Services ("IMS") established under Section 203 of the Act.

"Museum services" means services provided by a museum, primarily exhibiting objects to the general public, and including but not limited to preserving and maintaining its collections, and providing educational and other programs to the public through the use of its collections and other resources.

§ 1180.5 Eligibility and burden of proof—Who may apply.

(a) A museum located in any of the fifty States of the Union, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Guam, or the District of Columbia may apply for a grant under the Act.

(b) No museum is eligible to apply for funding available under the Act unless it has provided museum services, including exhibiting objects to the general public on a regular basis, for at least two years prior to application.

(c) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(d) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(e) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

[50 FR 27588, July 5, 1985]

§ 1180.6 Related institutions.

(a) If two or more institutions are under the common control of one agency or institution or are otherwise organizationally related and apply for assistance under the Act, the Director determines under all the relevant circumstances whether they are separate museums for the purposes of establishing eligibility for assistance under these regulations. See §§ 1180.5 and 1180.9.

(b) IMS regards the following factors, among others, as showing that a related institution is a separate museum:

(1) The institution has its own governing body;

(2) The institution has budgetary autonomy; and

(3) The institution has administrative autonomy.

§ 1180.7 General Operating Support.

In order to maintain, increase or improve museum services, a museum may apply for a grant under the Act to meet administrative, staff and operating costs, except as otherwise provided in these regulations.

§ 1180.8 [Reserved]

§ 1180.9 Likely size of grants and allocation of funds among activities.

(a) It is anticipated that no museum will receive for General Operating Support more than an amount to be specified by notice in the FEDERAL REGISTER for each fiscal year.

(b) The Director, subject to the policy direction of the Board, determines the percent of the funds available under the Act for grants in any fiscal year which shall be reserved for § 1180.7 General Operating Support grants.

[48 FR 27728, June 17, 1983, as amended at 50 FR 27588, July 5, 1985]

§ 1180.10 Allowable costs.

(a) Determination of costs allowable under a grant is made in accordance with government-wide cost principles in applicable OMB circulars. (OMB circular A-21 (educational institutions) February 26, 1979, published in 44 FR 12368 (March 6, 1979); OMB circular A-87 (State and local governments) January 15, 1981 published in 46 FR 9548 (January 28, 1981); and OMB circular A-122 (Nonprofit organizations) June 27, 1980, published in 45 FR 46022 (July 8, 1980)).

(b) No costs shall be allowed for the purchase of any object to be included in the collection of a museum, except library, literary, or archival material specifically required for a designated activity under a grant under the Act.

§ 1180.11 Basic requirements which a museum must meet to be considered for funding.

(a) *Application.* To apply for a grant, a museum must submit the designated application form containing the information requested in the form. Failure to submit the information required by the application at the time of filing can subject an applicant to rejection of the application without consideration on its merits.

(b) *IRS letter.* A museum applying as a private, nonprofit institution must submit a copy of the letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the applicable provision of the Internal Revenue Code of 1954, as amended.

(c) *Financial statements.* (1) Each applicant museum must submit, with its application at the time of filing, *its* financial statements for the two fiscal years immediately preceding the fiscal year for which application is made or, if not available, for the second and third immediately preceding years. Each financial statement must include a statement of financial operations and if applicable, a balance sheet. Examples of a financial statement and a balance sheet may be found in the Museum Accounting Guidelines of the Association of Science-Technology Centers (1976) or in the Museum Accounting Handbook of the American Association of Museums (1978).

(2)(i) Every applicant which has previously received an IMS award must submit its audited financial statement for the last fiscal year immediately preceding the fiscal year in which application is made or the immediately preceding fiscal year, prepared by an individual or organization meeting the qualifications of the Comptroller General of the United States for individuals or organizations conducting Government audits. Reference is made to GAO, *Standards for Audit of Governmental Organizations, Programs and Functions* (1981 revision).

(ii) In the case of a museum which does not use cash basis accounting, the individual or organization performing the audit must offer an opinion that the financial statement of the museum presents fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles. In the case of a museum which uses cash basis accounting, the individual or organization performing the audit must offer an opinion that the statement presents fairly (A) revenues collected and expenditures made and (B), where a balance sheet is involved, the assets, liabilities, and fund balances of the museum arising from cash transactions.

(3) If a museum is part of an organization such as a university, State or municipality and does not receive audits separate from those of the organization of which it is a part, it may submit its financial statement as drawn from and containing only audited figures of the organization of which the museum is a part. This financial statement, so prepared, must present fairly the financial position and the results of financial operations of the museum, and must clearly indicate that it has been so prepared and the Director *may*, upon written request filed at the time of the application, waive the requirement of a separate audit and proceed to process the application on its merits. Where the organization is not audited on an annual basis, the financial statement may be drawn from the most recent audited figures of the organization.

(4) The Director is authorized to defer the audit requirement set forth in paragraph (c)(2) of this section, in the case of a museum with non-federal operating income of $50,000 or less, exclusive of the value of non-cash contributions (in the fiscal period preceding the fiscal period for which the deferral is requested) if the Director finds that exceptional circumstances justify a deferral and that the grant of the deferral will not be inequitable to other applicants. A deferral may be granted only upon those conditions and in light of those assurances which the Director deems appropriate in order to ensure that the purposes of this paragraph are achieved. The authority to grant deferrals, unless renewed under this paragraph, expires on September 30, 1985.

(d) *Long-range plans.* Each applicant museum must include long-range plans for program and financial development.

(e)—(f) [Reserved]

(Museum Services Act, sec. 206, as amended, 20 U.S.C. 965)

(Approved by the Office of Management and Budget under control number 3137-0015)

[48 FR 27728, June 17, 1983, as amended at 49 FR 14110, Apr. 10, 1984; 50 FR 27588, July 5, 1985; 51 FR 43354, Dec. 2, 1986]

§ 1180.12 How applications are judged.

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in § 1180.13. Normally, these applications are first evaluated by field reviewers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b) To achieve diversity in the distribution of assistance, the Institute may consider the location, size and discipline of the applicant in addition to the criteria in § 1180.13.

[50 FR 27588, July 5, 1985]

§ 1180.13 Criteria for evaluation of applications for General Operating Support.

The following criteria apply to the evaluation of all applications for General Operating Support. In applying these criteria, the total operation of the applicant museum is assessed, including the museum's operation as it would be if the General Operating Support is granted. This assessment is based primarily on the information supplied in the museum's application.

(a) *Museum services.* Are the applicant's museum services of high quality? IMS considers factors such as:

(1) The quality of the museum's educational and interpretive services and their relevance to the collections and audience including the special constituencies which the museum serves;

(2) The quality of the museum's physical facilities and the manner in which space is allocated to various museum activities; and

(3) The qualifications of the professional staff (both full-time and part-

time; paid and volunteer) and the quality of the opportunities for professional staff development and in-service training afforded by the museum.

(b) *Collections and exhibits.* Are the museum's collections and exhibits of high quality and significance? IMS takes into account such factors as:

(1) The intrinsic value of the collections and exhibits;

(2) The significance of the museum's collections to the community; and

(3) The quality of the care and conservation of the collections; the quality of exhibit designs.

(c) *Accessibility.* How accessible to the general public are the museum's services, collections and exhibits? IMS considers such factors as:

(1) The percentage of the museum's collections on view to the general public on a regular basis; the extent of the museum's regular program for outreach, loans, and other means of exhibiting its collections to the public;

(2) The annual schedule of open hours for the museum; and

(3) The appropriateness of this schedule to the museum's audience.

(d) *Population served.* To what extent does the museum serve a general public which otherwise would have limited access to the type of museum services which it provides or to museum services of any type? To what extent does the public seek access to the museum's services? IMS considers such factors as:

(1) The characteristics of the audience and the community which the museum serves;

(2) The availability of other museums (or types of museums) which serve this audience and this community; and

(3) The museum's annual attendance by calendar quarters.

(e) *Financial Management.* What is the quality of the financial management of the museum? In how many of the last five years has the museum shown an excess of revenues over expenditures? IMS considers such factors as:

(1) The financial condition of the museum as reflected in its financial statements;

(2) The quality of the museum's plans for remedying any financial weaknesses in the museum's operations; and

(3) The qualifications of the museum staff assigned to financial management activities.

(f) *Long-range plans.* What is the quality of the museum's long-range plans for financial and program development? What are the museum's plans for the expenditure of the grant funds? IMS considers such factors as:

(1) The quality of the museum's long-range plans; how the museum proposes to implement them; how practical are the steps the museum plans to take to implement them?

(2) The probability that the General Operating Support grant, if awarded, will assist the museum in carrying out its long-range plans;

(3) In what manner will this grant, if awarded, contribute to maintaining, increasing or improving the museum's services?

(g) *Community commitment.* How committed to the museum are its users and supporters? Does the museum have a substantial base of non-Federal support? Does it have a strong volunteer program? IMS considers such factors as:

(1) The quality and extent of the financial support that the museum receives from the private sector and other non-Federal sources and the extent to which this support is stable, broad-based and indicative of continuing community commitment;

(2) The quality of the museum's volunteer program and its program of in-kind contributions and their importance to the museum's annual operations; and

(3) The commitment of its users to the museum as evidenced by such factors as participation in membership and docent programs, fund raising and other supportive activities.

(h) *Non-Federal support.* To what extent, if any, will the General Operating Support requested enable the museum to increase its base of State, local and private funding in the year for which assistance is requested and beyond?

(i) *Past use of IMS funds (when applicable).* Has the museum used its IMS funds effectively? How and in what amounts and in what manner have they been used?

§ 1180.14 [Reserved]

§ 1180.15 Duration of grant.

Grants under the Act normally permit the grantee to use the funds for a period of up to 12 months from the start of the grant period. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If the grantee needs additional time to complete the grant, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

§ 1180.16 IMS share of the cost of a proposal.

(a) Section 206(c) of the Museum Services Act provides that grants under this section [Section 206] for any fiscal year may not exceed 50 per centum of the cost of the program for which the grant is made, except that no more than 20 per centum of the funds available under this section for any fiscal year may be available for grants in such fiscal year without regard to such limitation. In applying the exception in section 206(c), priority will be given to Special Project grants.

(b) Subject to the amount specified under § 1180.9(a), IMS normally does not make grants for more than: (1) 10 percent of a museum's non-federal operating income for its most recently completed fiscal year for which financial information is available or (2) $5,000, whichever is greater. (See § 1180.11). A different figure may be specified by notice published in the FEDERAL REGISTER. Non-federal operating income may be increased by an amount reflecting the reasonable and conservative value of non-cash contributions to the museum in such most recently completed fiscal year.

(c) For a particular fiscal year, and for one or more programs, the Board may determine that an amount equal to the amount to be awarded (or a percentage thereof) to an applicant under the Act must consist of non-Federal funds contributed to the museum in excess of the non-Federal funds contributed to the museum for its immediately preceding fiscal year.

(d) A museum shall maintain a restricted account for funds received under the Act.

[48 FR 27728, June 17, 1983, as amended at 50 FR 27588, July 5, 1985]

§ 1180.17 Reports.

In its final report a grantee shall briefly detail how the expenditure of the grant funds has satisfied the proposed use of the funds as stated in its General Operating Support application or has accomplished the proposal as set forth in its Special Project application and has served the purpose of the Act as reflected in the applicable evaluation criteria in § 1180.14.

§ 1180.18 Maintenance of effort.

A grantee must be able to demonstrate a continuing effort to maintain or increase its base of financial support during the fiscal year for which it receives a grant from IMS. A grantee successfully demonstrates maintenance of effort if its non-federal operating income during the fiscal year of its award is at least equal to its non-federal operating income for its immediately preceding fiscal year.

[49 FR 14111, Apr. 10, 1984]

§ 1180.19 [Reserved]

§ 1180.20 Guidelines and standards for conservation projects.

(a) *Scope.* The guidelines and standards in this document apply to all aspects of the IMS conservation grant program including the submission of applications by museums for conservation grants, to the award, review and approval of such applications by IMS, and to the carrying out of conservation grants awarded by IMS.

(b) *Applicability of regulations.* (1) Except as otherwise provided in these guidelines, Subparts A–C of this part, Part 1180 of Title 45 CFR, (45 CFR 1180.1–1180.58) (IMS Grants Regulations), as amended, including §§ 1180.35, 1180.41, 1180.45, 1180.48, and 1180.49, apply to the IMS conservation grant program.

(2) Sections 1180.11(d) does not apply. A museum which applies for a conservation grant need not submit a long-range plan.

(3) Section 1180.16(b), which provides that IMS normally does not make grants for more than 10 percent of a museum's operating budget, does not apply to conservation grants.

(4) Section 1180.18 (relating to maintenance of effort) does not apply.

(5) In addition to submitting the final report required by § 1180.17, a grantee must submit an interim report in accordance with a schedule set forth in the grant award document. An applicant that has received a prior conservation grant from IMS the performance of which has not been completed may be required to submit an additional performance report or submit an interim report early.

(c) *Definition.* As used in these guidelines, the term "conservation" includes, but is not limited to, the following functions, as applied to art, history, natural history, science and technology, and living collections:

(1) Technical examination of materials and surveys of environmental and collection conditions;

(2) Provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, reformating, nurturing and transportation of objects;

(3) Physical treatment of objects, specimens and organisms, for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and physical compensation for losses; species survival activities; and

(4) Research and training in conservation.

(d) *Applicants.* Under the Museum Services Act only a museum may receive a grant. (20 U.S.C. 965(a)). See § 1180.3 of the IMS regulations for the definition of "museum". A museum may apply for and receive only one conservation grant under this program in a fiscal year.

(e) *Types of conservation projects funded.* IMS considers applications to carry out conservation projects such as:

(1) Projects to develop improved or less costly methods of conservation, or to maintain or improve conservation with respect to one or more collections, including—

(i) Projects involving surveys of conservation needs and

(ii) Projects to establish or maintain optimum environmental conditions.

(2) Projects to conduct research in conservation (including developmental and basic research).

(3) Projects to conduct or obtain training in conservation (including training of persons for careers as professional conservators; training or upgrading of practicing conservators and conservation technicians in the use of new materials and techniques; and training of persons to become conservation technicians).

(4) Projects related to museum conservation needs not regularly addressed by other Federal funding agencies.

(5) Projects to meet the conservation needs of museums which are unable to maintain their own individual conservation facilities. Because grants are made only to museums, organizations which operate regional conservation centers but which are not museums are ineligible for a direct grant. However, a museum or a group of museums may use a grant to obtain services from such a center.

(6) Projects to conserve particular objects in a museum's collection (including plants and animals) or to meet the conservation needs of a particular museum (through such activities as the employment of conservators and the procurement of conservation services or equipment).

(f) *Limits on Federal funding.* (1) IMS normally makes a conservation grant which obligates no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstance warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates in excess of $25,000 in Federal funds.

(2) A conservation grant is not included in the maximum amount which a museum may expect to receive from IMS for a fiscal year, as set forth pursuant to § 1180.9 of the regulations. Therefore, a museum may receive, for

example, a General Operating Support grant for the amount specified pursuant to that section and an additional amount for a conservation grant in a fiscal year.

(3) IMS makes conservation grants only on a matching basis. This means that at least 50 per cent of the costs of a conservation project must be met from non-federal funds. Principles in applicable OMB circulars regarding costs sharing or matching apply. See, e.g., OMB Circular A-102, Attachment F.

(g) *Application requirements; priorities; survey required in certain cases*—(1) Application requirements in § 1180.11 (a), (b), and (c) apply. An application shall describe when, during the term of the grant, the applicant plans to complete each objective or phase of the project. Where appropriate, IMS may require an applicant to submit a dissemination plan.

(2) The Board, by notice published in the FEDERAL REGISTER, may establish priorities with respect to all or part of the funds available to IMS for conservation for a fiscal year among the types of projects specified in paragraph (e) of this section. If the Board establishes one or more types of projects as a priority for a fiscal year, applications proposing projects of that type (or types) are evaluated, ranked and (if recommended for funding) approved before applications proposing other types of projects.

(3) The Director may, to the extent appropriate, require (by instructions in the application materials) that an applicant which proposes a project to conserve particular objects must show that, prior to the submission of the application, it has carried out a general survey of its conservation needs and priorities and that the project in question is consistent with such survey. In exceptional circumstances, the Director may adjust this requirement, consistent with the policy direction of the Board. The Director may also (through such instructions) require an applicant for a conservation project to submit additional information, material, or undertakings to carry out the purposes of this part.

(h) *Procedures for review of applications.* (1) IMS uses the procedures stated in this paragraph to review applications for conservation projects.

(2) IMS evaluates all eligible applications for conservation projects in accordance with applicable criteria. (See paragraph (i) of this section.) The Director expects to use panels of experts to review at least a portion of the applications for conservation grants. Depending upon the number of applications received as well as other factors, the Director may also use field reviewers to evaluate applications before submission of applications to the panels. In addition, the Director may use technical experts to provide technical advice regarding certain applications. See generally § 1180.12 of the IMS regulations.

(3) IMS evaluates applications for conservation projects separately from applications for general operating support.

(i) *Criteria.* This paragraph sets forth the criteria which IMS uses in evaluating and reviewing applications for conservation grants. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications.

(1) The following programmatic criteria apply to the evaluation and review of conservation grants:

(i) What is the importance of the object or objects to be conserved? What is the significance of the object or objects to the museum's collection and/or audience?

(ii) What is the need for the project, including the relationship of the project to the conservation needs and priorities of the applicant museum as reflected in a survey of conservation needs or similar needs assessment?

(iii) What are the applicant's plans to use and maintain the anticipated results or benefits of the project after the expiration of Federal support?

(iv) Does the applicant plan to devote adequate financial and other resources to the project without inhibiting its ongoing activities?

(2) The following technical criteria apply to the evaluation and review of applications for conservation grants:

(i) What is the nature of the proposed project with respect to project design and management plan?

(ii) To what extent does the application exhibit knowledge of the technical area to which the conservation project relates and employ the most promising or appropriate methods or techniques of conservation? To what extent is the conservation project likely to use, develop or demonstrate improved, more efficient, or more economic methods of conservation?

(iii) Does the project have an adequate budget to achieve its purpose? Is the budget reasonable and adequate in relation to the objectives of the project?

(iv) What are the qualifications of the personnel the applicant plans to use on the project and the proposed time that each such person is obligated to commit to the project?

(j) *Duration of grant.* IMS makes a conservation grant under this section for a period of not to exceed two years.

(k) *Grant condition.* An applicant which has received a grant in a prior fiscal year under the IMS conservation grant program may not receive a grant in a subsequent fiscal year under this section until required reports have been submitted regarding the performance of the previous grant.

(l) *Allowable and unallowable costs.* (1) Section 1180.10 of the IMS regulations, which applies to conservation grants, sets forth the rules applicable to determining the allowability of costs under IMS grants and refers readers to the OMB circulars containing applicable cost principles which govern Federal grants generally.

(2) In general such costs as compensation for personal services, costs of materials and supplies, rental costs, and other administrative costs specifically related to a conservation project are allowable under a conservation grant in accordance with applicable cost principles.

(3) Costs of alterations, repairs and restoration to an existing facility are allowable when they are related to a conservation project under a conservation grant in accordance with applicable cost principles.

(4) Costs of equipment are generally allowable if related to a conservation project but do require the specific approval of the Director as indicated in the grant award document.

(5) A grantee may award a stipend to an individual for training in connection with a conservation project. Stipends and allowances may be paid at rates and under conditions established by the Director consistent with policies of other agencies in the Foundation or other agencies or instrumentalities of the United States providing comparable assistance with respect to conservation.

(6) Costs of new construction are unallowable. For example, a museum may not a use a conservation grant to construct a new building or an addition to an existing building to improve the environment in which its collections are housed.

[50 FR 27585, July 5, 1985, as amended at 51 FR 43353, Dec. 2, 1986]

Subpart B—General Application, Selection and Award Procedures Applications

APPLICATIONS

§ 1180.30 Publication of an application notice; content of the notice.

Each fiscal year the Director publishes application notices in the FEDERAL REGISTER that explain what kind of assistance is available that fiscal year under the Act.

§ 1180.31 Information in the application notice.

(a) The application notice usually includes:

(1) How an applicant can get an application packet containing detailed information about the program including an application form;

(2) Where an applicant must send its application;

(3) The amount of funds available for grants;

(4) The approximate number of grants the Institute expects to make under the program;

(5) The expected cap on grant(s) that may be applied for;

(6) Any priorities established by the Institute for that year;

(7) A reference to the applicable regulations.

(b) [Reserved]

§ 1180.32 Deadline date for applications.

(a) The application notice sets deadline date for applications to be postmarked or hand delivered to the Institute. The applicant shall:

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, DC time) on deadline date.

(b) An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not date cancelled by the U.S. Postal Service.

§ 1180.33 Applicants must meet procedural rules.

The Director is authorized to make a grant only to an eligible applicant that submits a complete application, including attachments, on or before the deadline.

§ 1180.34 Number of copies.

Each applicant shall submit an original and four copies of its application to the Institute.

§ 1180.35 Special Project grant; group applications.

(a) Eligible museums may apply as a group for a Special Project grant.

(b) If a group of museums applies for a Special Project grant, the members of the group shall either:

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity, consisting solely of the museum group, to apply for the grant.

(c) The members of the group, or entity, shall enter into an agreement that:

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(d) The applicant shall submit the agreement together with its application.

(e) If the Director makes a grant to a group of eligible museums, the applicant for the group is the grantee and is legally responsible for:

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with applicable Federal laws, regulations, and requirements.

(f) Each member of the group is legally responsible for:

(1) Carrying out the activities it agrees to perform; and

(2) Using the funds it receives under the agreement in accordance with applicable Federal laws, regulations, and requirements.

SELECTION AND AWARD PROCEDURES

§ 1180.36 Rejection of an application.

(a) The Director rejects an application if:

(1) The applicant is not eligible;

(2) The applicant fails to comply with procedural rules that govern the submission of the application;

(3) The application does not contain the information required;

(4) The application cannot be funded under the authorizing statute or implementing regulations.

(b) If the Director rejects an application under this section, the Director informs the applicant and explains why the application was rejected.

§ 1180.37 Rejection for technical deficiency—appeal; reconsideration; waiver.

(a) An applicant whose application is rejected because of technical deficiency may appeal such rejection in writing to the Director within 10 days of postmark of notice of rejection.

(b) If an application was rejected because material did not accompany the application, the Director shall reconsider the application upon receipt of material in a timely manner.

(c) As has always been the practice of IMS, the Director waives the requirement in these regulations of certain records under circumstances which would require such waivers where the regulations specifically provide for waiver. (See § 1180.51(b) (Pub. L. 97-394))

§ 1180.38 How grants are processed.

(a)(1) The Director may use one or more groups of experts or readers to evaluate eligible applications.

(2) Each group consists of three or more qualified persons.

(3) In each group there must be at least one person who is not an employee of the Federal Government.

(4) A person may not serve as a member of a group of experts or readers if the person is an employee of the Institute who is regularly involved in grants processing; however, the Director may sign a waiver for such person and that person may serve as a member of a group of experts or readers.

(b) When the director uses a group of experts or readers, the group of experts or readers uses the applicable evaluation criteria set forth in the Regulations to evaluate each application.

(c) After the groups of experts or readers have evaluated the applications, a rank ordering of the application is prepared. The rank ordering of the eligible applications is based solely on the evaluations of the applications by the groups of experts.

(d) Subject to § 1180.12, the Director, in consultation with the Board, then determines the order in which applications will be selected. The Director makes these determinations on the basis of the evaluation criteria and any priorities or other program requirements that have been published in the FEDERAL REGISTER. The Director may consider the following in making these determinations:

(1) The application.

(2) The rank ordering of the applications.

(3) Any other information relevant to applicable criteria, priorities, or any other applicable information or requirements. (Cross reference. See § 1180.12)

§ 1180.39 Applications not selected for funding.

If an application is not selected for funding, the Director informs the applicant.

§ 1180.40 How the Institute makes a Special Project grant.

The Director follows the procedures in §§ 1180.41 through 1180.42 to set the amount and determine the conditions of a Special Project grant.

§ 1180.41 The cost analysis; basis for Special Project grant amount.

(a) Before the Director sets the amount of a Special Project grant, a cost analysis of the project is made which involves an examination of:

(1) The cost data in the detailed budget for the project;

(2) Specific elements of costs; and

(3) The necessity, reasonableness, and allowability under applicable statutes and regulations.

(b) [Reserved]

§ 1180.42 The notification of grant award.

(a) The Director furnishes a notification of grant award to the grantee.

(b) The notification of grant award sets the amount of the grant and gives other information about the grant.

§ 1180.43 Effect of the grant.

The grant obligates both the Federal Government and the grantee to all of the requirements, regulations and statutes that apply to the grant.

Subpart C—General Conditions Which Must Be Met by a Grantee

NONDISCRIMINATION

§ 1180.44 Federal statutes and regulations on nondiscrimination.

Each grantee shall comply with the following statutes:

Subject	Statute
Discrimination on the basis of race, color or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 through 1683).
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101) *et seq.*

§ 1180.45 Use of consultants in Special Projects.

(a) Subject to Federal statutes and regulations, a Special Project grantee shall adhere to its general policies and practices when it hires, uses, and pays a consultant as part of the Special Project staff.

(b) The grantee may not use its grant to pay a consultant unless:

(1) There is a need in the project for the services of that consultant; and

(2) The grantee cannot meet that need through using an employee rather than a consultant.

EVALUATION

§ 1180.46 Evaluation by the grantee.

A grantee shall evaluate at least semi-annually:

(a) The grantee's progress in achieving the objectives set forth in its approved application: and

(b) The contribution of the grant toward meeting the purposes of the Act.

§ 1180.47 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation by the Director of the particular grant program in which grantee has participated.

PUBLICATIONS AND COPYRIGHTS

§ 1180.48 General conditions on publications.

(a) *Content of materials.* Subject to any specific requirements that apply to its Special Project grant, a Special Project grantee may decide the format and content of Special Project materials that it publishes or arranges to have published.

(b) *Required Statement.* The grantee shall ensure that any publication that contains Special Project materials also contains the following statement:

> The contents of this (insert type of publication, e.g., book, report, film) were developed in whole or in part under a grant from the Institute of Museum Services. However, the contents do not necessarily represent the policy of the Institute, and endorsement by the Federal Government should not be assumed.

§ 1180.49 Copyright policy for grantees.

A grantee may copyright Special Project materials in accordance with government-wide policy applicable to copyright of publications developed under Federal grants.

§ 1180.50 Definition of "Special Project materials."

As used in §§ 1180.48 through 1180.49, "Special Project materials" means a copy-rightable work developed in whole or in part with funds from a Special Project grant from the Institute.

GENERAL ADMINISTRATIVE RESPONSIBILITIES

§ 1180.51 Compliance with statutes, regulations, and its approved grant application.

(a) A grantee shall comply with applicable statutes, regulations, and the approved grant application, and shall use Federal funds in accordance therewith.

(b) No official, agent, or employee of the Institute may waive any regulation unless the regulation specifically provides for waiver.

(c) No act or failure to act by an official, agent, or employee of the Institute can affect the authority of the Director to enforce regulations.

(d) In any circumstance for which waiver is provided, the determination of the Director shall be final.

§ 1180.52 The grantee administers or supervises the grant.

A grantee shall directly administer or supervise the administration of the grant and be answerable therefor.

§ 1180.53 Fiscal control and fund accounting procedures.

A grantee shall exert fiscal control and employ fund accounting procedures that ensure proper disbursement of and accounting for Federal funds in accordance with OMB circulars A-102 and A-110.

§ 1180.54 Obligation of funds during the grant period.

A grantee may use grant funds for obligations it makes only during the grant period.

§ 1180.55 Prohibition of subgrants.

(a) A grantee may not make a subgrant.

(b) A grantee may contract for supplies, equipment, and services subject to § 1180.45(a).

RECORDS

§ 1180.56 Records related to grant funds.

A grantee shall, in accordance with OMB circular A-102 and A-110, keep records that show accurately and in full:

(a) The amount of funds awarded under the grant;

(b) The exact uses of the funds;

(c) The total amount expended under the grant;

(d) The amount expended under the grant during the grant period provided from non-Federal sources; and

(e) Other records necessary to facilitate an effective audit.

§ 1180.57 Records related to compliance.

A grantee shall, in accordance with OMB circulars A-102 and A-110, keep accurate and full records to show its compliance with specific requirements set forth in the regulations and published notices, or contained in the grant award documents.

§ 1180.58 Records related to Special Project performance.

(a) A Special Project grantee shall keep records revealing progress and results under the grant.

(b) The grantee shall use the records under paragraph (a) of this section to:

(1) Determine progress in accomplishing Special Project objectives; and

(2) Revise those objectives, if necessary, and authorized under the grant.

§ 1180.59 Applicability.

(a) Subparts B and C (§§1180.30 through 1180.58) apply to General Operating Support and Special Project assistance, except as otherwise provided in these regulations.

(b) The Education Department General Administrative Regulations (34 CFR Parts 75 through 78) do not apply to the Institute of Museum Services.

Subpart D—Museum Assessment

SOURCE: 50 FR 27588, July 5, 1985, unless otherwise noted.

§ 1180.70 Purpose of program.

The Director of the Institute of Museum Services makes grants under this subpart to assist museums in carrying out institutional assessments. The grants enable museums to obtain technical assistance in order to evaluate their programs and operations by generally accepted professional standards. The Director may make grants for separate categories of assessment activities and establish conditions for receipt of assistance for such separate categories. Such categories may include assessment activities relating to—

(a) General operations;

(b) Collections;

(c) Museum security, and

(d) Other aspects of museum services, as specified by the Board.

[51 FR 43354, Dec. 2, 1986]

§ 1180.71 Eligibility.

(a) A museum as defined in § 1180.3 may apply for assessment assistance under this subpart.

(b) A museum which receives a grant for assessment assistance under this subpart for a fiscal year may not receive another grant for the same category of assessment assistance in the same or a subsequent fiscal year.

§ 1180.72 Allowable costs.

A museum may use a grant under this subpart for expenses of institutional assessment, such as registration fees, surveyor honorariums, travel and other expense of a surveyor, and technical assistance materials.

§ 1180.73 Form of assistance; limitation on amount.

(a) The Director makes payments to a museum under this subpart in advance.

(b) The amount of a grant to a museum under this subpart may not exceed $1,400.

[50 FR 27588, July 5, 1985, as amended at 52 FR 5770, Feb. 26, 1987]

§ 1180.74 Conditions of participation.

The Director considers an application by a museum on a form supplied by IMS for a grant under this subpart for assessment assistance only if:

(a) The museum requests assessment from an appropriate professional organization as defined in this section, and

(b) That organization notifies IMS that the request for the assessment assistance is complete and that the museum is eligible to participate. An appropriate professional organization for purposes of this subpart means: (1) The American Association of Museums or (2) other professional organizations that are determined to be capable of arranging for a program of assessment services for a category of museums and are so designated by notice published in the FEDERAL REGISTER.

§ 1180.75 Funding and award procedures.

(a) The Director approves applications meeting the requirements of this subpart on first-come, first-served basis, in the order in which it is determined by IMS that such requirements (including all application requirements) have been met.

(b) There are no selection criteria.

(c) Section 1180.16 (IMS share of the cost of a proposal) does not apply to grants under this subpart.

(d) A museum receiving assistance under this subpart need not submit a financial report or a performance report.

(e)(1) Except as provided in § 1180.71 and paragraph (e)(2) of this section Subparts A, B, and C of Part 1180 of Title 45 CFR do not apply to the Museum Assessment Program.

(2) The following sections do apply to the Museum Assessment Program: Sections 1180.5(a); 1180.5(c); 1180.5(d); 1180.5(e); 1180.15; 1180.44; 1180.47; and 1180.51–1180.57.

§ 1180.76 Responsibility of a museum.

Except in unusual circumstances, a museum which receives a grant under this subpart must take the steps normally expected of it to complete the assessment process for which it has received assistance. Section 1180.13(i) (a criterion for evaluation of general operating support applications) applies to the use of funds under this subpart.

Subpart E—Assistance To Professional Museum Organizations

§ 1180.77 Contracts and cooperative agreements with professional museum organizations.

(a) *Scope.* The guidelines and standards in this section apply to all aspects of the Institute's program to provide financial assistance, through contracts and cooperative agreements, to professional museum organizations for the carrying out of certain projects pursuant to section 206(b) of the Act.

(b) *Definitions.* For the purposes of this subpart, the term "professional museum organization" means a private, non-profit professional museum services-related organization, institution, or association which engages in activities designed to advance the well-being of museums eligible for assistance under this part and the museum profession through such activities as technical assistance, dissemination of information, professional development activities, and professional services.

(c) *Applicability of other regulations.* The following IMS regulations apply to assistance under this subpart:

(1) Section 1180.3; § 1180.4; and § 1180.5(e) of Subpart A and

(2) Sections 1180.30–1180.33 and §§ 1180.36–1180.39 of Subpart B; and

(3) Section 1180.44, § 1180.46 and §§ 1180.51–1180.59 of Subpart C.

(d) *Applicants.* (1) A professional museum organization may apply for assistance through a contract or cooperative agreement under this subpart.

(2) A professional museum organization that serves museums or museum professionals at the national, regional, state, or local level may apply.

(3) An entity eligible for assistance under other subparts of this Part 1180 may not apply.

(e) *Types of projects.* The Institute considers applications under this subpart to carry out projects designed to strengthen museum services such as:

(1) Programs to educate professionals in improved or innovative standards of museum operations or other matters relating to museum management;

(2) Research or surveys to determine effective and innovative methods to provide museum services or conduct operations;

(3) Projects to investigate the feasibility of cooperative methods for the carrying out by museums of management, storage, and information gathering and sharing, or other museum functions; or

(4) Research projects to help museums and museum associations serve their publics more effectively.

(f) *Limitation.* No financial assistance may be provided under this subpart to pay for the operational expenses of any professional museum organization.

(g) *Amount of contract or cooperative agreement.* The amount of contracts or cooperative agreements shall be subject to the availability of appropriations. Guidance on probable award ranges will be provided with application materials each year.

(h) *Matching.* A contract or cooperative agreement under this subpart for any fiscal year may not normally exceed 50 per centum of the cost of the project for which the contract or cooperative agreement is made. In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive this requirement pursuant to section 206(c) of the Act.

(i) *Application requirements.* (1) An applicant under this subpart must submit an application in such time and such manner, and containing such information, as requested by the Institute.

(2) An applicant must submit with its application its financial statements for the two most recent fiscal years for which information is available. For applications requesting in excess of $20,000, the Institute requests that one of those statements be audited.

(j) *Procedures for review of applications.* To evaluate applications and determine the amount of their awards, the Institute rates competitive applications under the applicable criteria stated in paragraph (k) of this section. Normally, these applications are evaluated by field reviewers, panels of experts, or both. The Director may also use technical experts in the review of applications. Final determinations as to the award of contracts or cooperative agreements are made by the Director after consultation with the Board with respect to policy matters.

(k) *Criteria.* This paragraph sets forth the criteria that the Institute uses in evaluating and reviewing applications for contracts or cooperative agreements under this subpart. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications:

(1) To what extent is the project likely to strengthen museum services?

(2) To what extent does the project hold promise of exploring or developing effective and innovative solutions to problems affecting the provision of museum services or operations?

(3) Has the need for the project been adequately documented?

(4) What is the quality of the project design?

(5) Does the project have an adequate budget to achieve its purpose?

(6) What are the qualifications of the personnel the applicant plans to utilize in the project?

(7) What are the anticipated long-term benefits of the project?

(l) *Duration.* No financial assistance may be provided under this subpart for any project for a period in excess of one year. The one year period begins with the date that the project is scheduled to commence under the applicable contract or cooperative agreement.

(m) *Limitation on number of applications.* An applicant may submit only one application with respect to each deadline.

[53 FR 31338, Aug. 18, 1988]

Subpart F—[Reserved]

Subpart G—Meetings of the National Museum Services Board

GENERAL

AUTHORITY: Museum Services Act (20 U.S.C. 961-68), as amended, and Pub. L. 97-100, 95 Stat. 1414; Pub. L. 97-394, 96 Stat. 1994; 5 U.S.C. 552b.

SOURCE: 49 FR 3184, Jan. 26, 1984, unless otherwise noted.

§ 1180.80 Scope.

5 U.S.C. 552b, added to the United States Code by the Government in the Sunshine Act, Pub. L. 94-409 (1976), provides that collegial bodies which head Federal agencies must, with certain exceptions, hold their meetings in public. Section 552b applies to meetings of the National Museum Services Board ("NMSB"). The regulations in this document (Subpart G of Part 1180, Title 45 CFR) set forth procedures for the conduct of meetings of the NMSB in accordance with Section 552b.

§ 1180.81 General rule.

Unless properly closed under § 1180.88, every portion of every meeting of the NMSB is open to public observation. For the purposes of this document a "meeting" means the deliberations of at least the number of members of the NMSB required to take action on behalf of the NMSB, where these deliberations determine, or result in the joint conduct or disposition of official IMS business. (A "meeting" does not include deliberations required or permitted by subsection (d) or (e) of section 552b.)

§ 1180.82 Application to NMSB committees.

This document applies to committees of the NMSB when they are authorized to make final policy decisions on the NMSB's behalf. This document does not apply to committees or informal working groups of the NMSB which are authorized to make recommendations or reports to the NMSB or to perform technical or ministerial functions on its behalf.

§ 1180.83 Record vote.

(a) Certain action of the NMSB with regard to meetings under these regulations may be taken only by "record vote." For purposes of this document, a vote of the NMSB is a "record vote" if—

(1) It carries by a majority of all those holding offices as NMSB members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each member voting is recorded.

(b) Within one day of a record vote to close, or withhold information about a meeting, or any record vote for this purpose that does not achieve the necessary majority, the NMSB makes available to the public a written record showing the vote of each member.

(c) The NMSB may take a vote with respect to matters governed by this part (without convening) by means of circulation of a written ballot, tally sheet, or other notation procedures.

ANNOUNCEMENT OF MEETINGS

§ 1180.84 Public announcement of meetings.

(a) Except as stated in paragraphs (b) and (c) this section, the NMSB makes a public announcement of each meeting at least one week before the meeting. The announcement covers:

(1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and phone number of the official designated to respond to requests for information on the meeting.

(b) The announcement may be made less than a week before the meeting it announces or after the meeting only if—

(1) The NMSB by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) a public announcement is made at the earliest practicable time.

(c) All or any portion of the announcement of any meeting may be omitted if the NMSB by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 1180.88.

§ 1180.85 Changes in time or place of meeting.

The time or place of a meeting of the NMSB that has been publicly announced as provided in § 1180.84 may subsequently be changed. However, the change must be publicly announced at the earliest practicable time.

§ 1180.86 Changes in subject matter of meeting.

The subject matter of any portion of any meeting of the NMSB that has been publicly announced as provided in § 1180.84 (or the determination whether any portion of any meeting so publicly announced will be open or closed) may subsequently be changed if—

(a) The NMSB determines by record vote that agency business so requires and that no earlier announcement of change was possible; and

(b) The NMSB publicly announces the change and the vote of each member on the change at the earliest practicable time. (Deletion or postponement of agenda items are not subject to the requirements of this section.)

§ 1180.87 Publication of announcements.

Promptly following a public announcement required by these regulations, the NMSB submits, for publication in the FEDERAL REGISTER, a notice containing information regarding the announcement as required by section 552b.

CLOSED MEETINGS

§ 1180.88 Reasons and procedures for closing meetings.

(a) The NMSB may, by record vote in accordance with section 552b, close any portion of a meeting if it determines that the portion falls within one of the exceptions stated in 5 U.S.C. section 552(c). (These exceptions are listed in Appendix A.)

(b) In making a determination under paragraph (a) of this section, the NMSB considers whether the public interest merits keeping the meeting open although an exception applies.

(c) The Board addresses requests for the certification required by section 552b to the individual responsible for providing legal services to the Institute with respect to section 552b.

(d) Within one day of a record vote closing a portion of a NMSB meeting, the NMSB makes available a full written explanation of the NMSB's action and a list of all persons it expects to attend the meeting and their affiliations.

§ 1180.89 Requests to close meetings.

A person who believes his or her interests may be directly affected by a meeting or a portion of a meeting may request the NMSB to close it to the public for a reason cited in paragraphs (5), (6), or (7) of Appendix A. Such requests are handled under procedures established by the NMSB in accordance with section 552b. This information collection has been assigned OMB No. 3137-0005.

§ 1180.90 Materials related to closed portions of meetings.

If a portion or portions of any meeting of the NMSB are closed to the public—

(a) The presiding officer of the meeting (usually the Chairman of the NMSB) furnishes a statement setting forth the time and place of the meeting and the persons present (including staff).

(b) Except where the Act authorizes minutes to be kept, the NMSB makes a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(c) The NMSB maintains the presiding officer's statement, the certificate described in § 1180.88(c) as required by Section 552b, and the transcript, recording, or minutes of the meeting for at least two years after the meeting and at least one year after the NMSB completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 1180.91 Opening of transcript or recording of closed meeting.

(a) Except as stated in paragraph (b) of this section, the NMSB makes available for inspection the transcript, electronic recording or minutes of every portion of a very closed meeting on request tm any member of the public. The transcript or recording is made available in an easily accessible place. The NMSB furnishes to any member of the public on request copies of the transcript (or of a transcription of the recording) disclosing the identity of each speaker. The NMSB charges for the copies or transcriptions no more than the actual cost of duplication or transcription.

(b) The NMSB withholds the transcripts or recording of the discussion of any agenda item if the Chairman of the NMSB (or a NMSB member designated by the Chairman) determines that the discussion contains information which should be withheld under the same standards which apply for closing meetings under § 1180.88. The NMSB releases the transcript or recording so withheld when the Chairman (or the Chairman's designee) determines that the grounds for withholding no longer apply.

APPENDIX A

A meeting may be closed if:

(1) It is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) It is likely to relate solely to the internal personnel rules and practices of the IMS or another Federal agency;

(3) It is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) It is likely to disclose trade secrets and commercial or financial information obtained from the person and privileged or confidential;

(5) It is likely to involve accusing any person of a crime, or formally censuring any person;

(6) It is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) It is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(7);

(8) It is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) It is likely to disclose information, the premature disclosure of which (i) in the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution: or (ii) be likely to significantly frustrate implementation of a proposed IMS action unless the IMS has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the IMS participation in a civil action or proceeding, or action in a foreign court or international tribunal, or an arbitration.

PART 1181—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INSTITUTE OF MUSEUM SERVICES

Sec.

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Sec.
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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4578 and 4579, Feb. 5, 1986, unless otherwise noted.

§ 1181.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1181.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1181.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

best copy available

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1181.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4578 and 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 1181.104—1181.109 [Reserved]

§ 1181.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 1181.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1181.112—1181.129 [Reserved]

§ 1181.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1181.131—1181.139 [Reserved]

§ 1181.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1181.141—1181.148 [Reserved]

§ 1181.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1181.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1181.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1181.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4578 and 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 1181.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1181.152—1181.159 [Reserved]

§ 1181.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1181.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1181.161—1181.169 [Reserved]

§ 1181.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Institute of Museum Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, D.C. 20506.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1181.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4578 and 4579, Feb. 5, 1986, as amended at 51 FR 4578, Feb. 5, 1986]

§§ 1181.171—1181.999 [Reserved]

PART 1183—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 20 U.S.C. 961—968.

SOURCE: 53 FR 8083, 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, March 11, 1988.

Subpart A—General

§ 1183.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 1183.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 1183.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1183.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1183.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities;

and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 1183.4(a) (3) through (8) are subject to Subpart E.

§ 1183.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1183.6.

§ 1183.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1183.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1183.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1183.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 1183.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1183.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1183.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1183.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 1183.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 1183.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 1183.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1183.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1183.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1183.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1183.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1183.31 and 1183.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1183.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 1183.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 1183.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 1183.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee

must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1183.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1183.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1183.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgran-

tee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1183.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 1183.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1183.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1183.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1183.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1183.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 1183.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procure-

ments. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition*. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1183.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services

are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1183.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through so-

licitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see

§ 1183.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and

material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 1183.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon

them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1183.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1183.10;

(2) Section 1183.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 1183.21; and

(4) Section 1183.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 1183.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1183.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 1183.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the

report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1183.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1183.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1183.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1183.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1183.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1183.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1183.41(b)(2).

§ 1183.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1183.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1183.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 1183.35).

§ 1183.44 Termination for convenience.

Except as provided in § 1183.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1183.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1183.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 1183.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1183.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1183.42;

(d) Property management requirements in §§ 1183.31 and 1183.32; and

(e) Audit requirements in § 1183.26.

§ 1183.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements [Reserved]

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C TO PART 1185—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 20 U.S.C. 961-68 as amended.

SOURCE: 53 FR 19202 and 19204, May 26, 1988, unless otherwise noted.

EDITORIAL NOTES:

(1) For nomenclature change to Part 1185, see 53 FR 19202, May 26, 1988.

(2) For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474, September 6, 1988.

Subpart A—General

§ 1185.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 1185.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1185.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) [Reserved]

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *IMS.* Institute of Museum Services.

[53 FR 19202 and 19204, May 26, 1988]

§ 1185.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 1185.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1185.110(a). Sections 1185.325, "Scope of debarment," and 1185.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 1185.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1185.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 1185.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1185.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 1185.205 Ineligible persons.

Persons who are ineligible, as defined in § 1185.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 1185.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1185.315 are excluded in accordance with the terms of their settlements. IMS shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 1185.215 Exception provision.

IMS may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and

§ 1185.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1185.505(a).

§ 1185.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1185.215.

§ 1185.225 Failure to adhere to restrictions.

Except as permitted under § 1185.215 or § 1185.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1185.300 General.

The debarring official may debar a person for any of the causes in § 1185.305, using procedures established in §§ 1185.310 through 1185.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1185.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1185.300 through 1185.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1185.215 or § 1185.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1185.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 1185.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4965, Jan. 31, 1989]

§ 1185.310 Procedures.

IMS shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1185.311 through 1185.314.

§ 1185.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 1185.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1185.305 for proposing debarment;

(d) Of the provisions of § 1185.311 through § 1185.314, and any other IMS procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 1185.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1185.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1185.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1185.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, IMS may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 1185.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* 1185.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1185.311 through 1185.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4965, Jan. 31, 1989]

§ 1185.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1185.311 through 1185.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 1185.400 General.

(a) The suspending official may suspend a person for any of the causes in § 1185.405 using procedures established in §§ 1185.410 through 1185.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1185.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1185.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 1185.400 through 1185.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1185.305(a); or

(2) That a cause for debarment under § 1185.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1185.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* IMS shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1185.411 through § 1185.413.

§ 1185.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1185.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 1185.411 through 1185.413 and any other IMS procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1185.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1185.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1185.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1185.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 1185.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 1185.325), except that the procedures of §§ 1185.410 through 1185.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, IMS and Participants

§ 1185.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 1185.505 IMS responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which IMS has granted exceptions under § 1185.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1185.500(b) and of the exceptions granted under § 1185.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) IMS officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) IMS officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1185.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to IMS if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 54 FR 4965, Jan. 31, 1989, unless otherwise noted.

§ 1185.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§ 1185.605 Definitions.

(a) Except as amended in this section, the definitions of § 1185.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged

with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§ 1185.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 1185.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § 1185.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§ 1185.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1185.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 1185.320(a)(2) of this part).

§ 1185.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1185.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspend-

ed, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 1185—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

[53 FR 19201 and 19204, May 26, 1988, as amended at 54 FR 4965, Jan. 31, 1989]

PARTS 1186—1199 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Material Approved for Incorporation by Reference

(Revised as of September 29, 1989)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

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Redesignation Table

At 42 FR 59212, November 15, 1977, regulations formerly appearing in 45 CFR Chapter IX, Administration on Aging were transferred to 45 CFR Chapter XIII, Office of Human Development.

The regulations added to Chapter XIII are redesignated as regulations in Subchapter C—Administration on Aging, Older Americans Programs of Chapter XIII.

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three volumes.

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